

113

UNITED STATES DISTRICT COURT.

• • (Caption—63-C-2248) • •

AFFIDAVIT EVIDENCING COMPLIANCE WITH
GENERAL RULE 39.

(As Amended December 14, 1962.)

Affiant is the attorney of record for Dora Surowitz, individually and on behalf of all other similarly situated shareholders of Hilton Hotels Corporation, and has knowledge of the matters covered by this affidavit and has read General Rule 39.

Affiant has not directly or indirectly solicited employment by the above-named party or parties, and knows of no solicitation of said party or parties by any person that has resulted in the employment of the affiant, except (here state all exceptions, or if none state "no exception"):

No exception.

Affiant has not paid, or promised to pay, and knows of no payment or promise of payment to the above-named party, or parties, of the costs of this case, or of the medical, living or other expenses of any party, or of any part of an attorney's fee, or of any portion of the recovery by suit or settlement herein to any person whatever other than the above-named party or parties and the attorneys of record herein, except (here state all exceptions, or if none state "no exception"):

No exception.

Walter J. Rockler,

Affiant.

Subscribed and sworn to before me this 13th day of December A. D. 1963.

Beatrice Sullivan,

(Seal)

Notary Public.

114

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• • (Caption—63-C-2248) • •

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No exception.

Affiant has not paid, or promised to pay, and knows of no payment or promise of payment to the above-named party, or parties, of the costs of this case, or of the medical, living or other expenses of any party, or of any part of an attorney's fee, or of any portion of the recovery by suit or settlement herein to any person whatever other than the above-named party or parties and the attorneys of record herein, except (here state all exceptions, or if none state "no exception"):

No exception.

Richard F. Watt,

Affiant.

Subscribed and sworn to before me this 13th day of December A. D. 1963.

(Seal)

Notary Public.

AFFIDAVIT EVIDENCING COMPLIANCE WITH
GENERAL RULE 39.

(As Amended December 14, 1962.)

Affiant is the attorney of record for Droa Surowitz, and has knowledge of the matters covered by this affidavit and has read General Rule 39.

Affiant has not directly or indirectly solicited employment by the above-named party or parties, and knows of no solicitation of said party or parties by any person that has resulted in the employment of the affiant, except (here state all exceptions, or if none state "no exception"):

Affiant has not paid, or promised to pay, and knows of no payment or promise of payment to the above-named party, or parties, of the costs of this case, or of the medical, living or other expenses of any party, or of any part of an attorney's fee, or of any portion of the recovery by suit or settlement herein to any person whatever other than the above-named party or parties and the attorneys of record herein, except (here state all exceptions, or if none state "no exceptions"):

Howard L. Kostil,

Affiant.

Subscribed and sworn to before me this 24th day of Feb. A.D. 1964.

James T. Baloz,

(Seal)

*Notary Public.**Deputy Clerk.*

145 State of Illinois, }
County of Cook. } ss.

AFFIDAVIT.

1. I, E. T. Cassin, am a Trust Officer and an Assistant Secretary of the First National Bank of Chicago.

2. The First National Bank is the transfer agent for Hilton Hotels Corporation, and has been such since June 13, 1946.

3. We have reviewed the open and closed ledgers from January 1, 1957 to the present.

4. The records indicate that Mrs. Dora Surowitz, 1299 Ocean Avenue, Brooklyn, New York, owns 100 shares of Hilton common stock, Certificate No. 100897, dated October 10, 1963, and that said Dora Surowitz has been a stockholder of record since said October 10, 1963.

E. T. Cassin.

Subscribed and sworn to before me this 25th day of February, 1964.

Norman Neher,

(Seal)

Notary Public.

My commission expires Dec. 16, 1966.

146 IN THE UNITED STATES DISTRICT COURT.
 * * (Caption—63-C-2248) * *

The deposition of Dora Surowitz, the plaintiff herein, called for examination pursuant to notice and pursuant to the Rules of Civil Procedure for the United States District Court pertaining to the taking of depositions for the purpose of discovery, taken before Dorothy L. Brackenbury, a notary public within and for the County of Cook and State of Illinois at 135 South LaSalle Street, Chicago, Illinois, on Tuesday, February 25, 1964, at the hour of 10:00 o'clock a.m.

Present:

Mr. Richard F. Watt and Mr. Walter J. Rockler, on behalf of plaintiff;

Mr. Samuel W. Block, Mr. John J. Crown, and Mr. Keith F. Bode, on behalf of defendant Henry Crown;

147 Mr. William J. Friedman and Mr. Stanley R. Zax, on behalf of Defendants Lawrence Stern, Willard Keith and Spearl Ellison;

Mr. Don H. Reuben and Mr. Lawrence Gunnels, on behalf of defendant Hilton Hotels Corporation.

148 DORA SUROWITZ, having been first duly sworn, deposeth and saith as follows:

Examination by Mr. Block.

Q. Mrs. Surowitz, will you state your name and residence address, please?

A. Yes. Dora Surowitz, D-o-r-a S-u-r-o-w-i-t-z, 1299 Ocean Avenue, Brooklyn, New York.

Q. What is your business or occupation, Mrs. Surowitz?

A. Dressmaker.

Q. For whom or by whom are you employed?

A. Marlou Dress Company.

Q. Will you spell that, please?

A. M-a-r-l-o-u.

Q. Where is that located?

A. That is 265 West 40th Street.

Q. In Manhattan?

A. Manhattan.

Q. How long have you been employed there?

A. Thirteen years in November. It is going on fourteen years.

Q. Do you have any property interest in the dress 149 company by whom you are employed?

A. No, just my salary, that's all.

Q. Are you the Dora Surowitz who signed the complaint in the cause entitled Dora Surowitz *vs.* Hilton Hotels Corporation, et al.?

A. Yes.

Q. Did you read the complaint prior to the time that you signed it?

A. It was written by somebody. My son-in-law read it to me.

Q. Where was your son-in-law when he read it to you?

A. We were at home.

Q. What is your son-in-law's name?

A. Irving Brilliant.

Q. Will you spell that?

A. B-r-i-l-l—

Mr. Rockler: -i-a-n-t.

By Mr. Block:

Q. What is Mr. Brilliant's business or occupation?

A. I don't know what he is doing.

Q. You don't know what he is doing. Can you tell us what Mr. Brilliant said to you when he brought this complaint to you and read it to you?

150 A. He just explained it to me, certain documents which I understood, to sign.

Q. Had you discussed this document with Mr. Brilliant before the day you signed it?

A. We discussed it not too much because I left it to him.

Q. When did you first discuss with Mr. Brilliant the complaint that you signed?

A. Well, he told me what it's all about, and I signed.

Q. Did you sign it on December 13, 1963—Strike that.

A. I guess so. I don't remember the date. It must have been about that date what you have it there.

Q. Did you sign it on or about December 12, 1963?

A. Sometime. I don't remember exactly the date. I really can't tell you. I don't remember.

Q. When prior to the time you signed it did you first discuss this complaint with Mr. Brilliant?

A. Well, I left it to him and that is what he told me to do.

Q. So that the first time you discussed this complaint with Mr. Brilliant was the time that he read it to you
151 and you signed it, he told you what to do?

A. Yes, sir.

Q. When did you acquire your shares of stock in Hilton Hotels Corporation?

A. It was about 1957.

Q. How many shares do you own?

A. 100.

Q. Have you ever bought any additional shares from the first purchase or did you buy 100 shares on the first time?

A. No, we bought it—I don't remember. I can't tell you. I don't remember. This is—I really don't know. I gave money, I gave him the money, and he invested it, but how he bought it or what he bought, I don't remember.

Q. When you say he, you mean Mr. Brilliant?

A. Yes.

Q. Now, Mrs. Surowitz—

Mr. Block: Would you read back the answer to the question as to when she—well, it is easier to start over.

By Mr. Block:

Q. Do you recall what year in which you purchased 152 those shares?

A. I don't remember.

Q. Have you done any trading at all in Hilton Hotels Corporation stock, Mrs. Surowitz, buying and selling the stock?

A. I don't think so. I don't remember. I don't remember what he—I really don't remember.

Q. I show you a letter dated January 22, 1963, addressed to the Hilton Hotels Corporation and signed, "Dora Surowitz," which I will ask to have identified as Defendant's Surowitz Deposition Exhibit No. 1—

(Said document was thereupon marked Defendant's Surowitz Deposition Exhibit No. 1 for identification.)

By Mr. Block:

Q. Is that your signature on that letter?

A. Yes, this is mine (indicating).

Mr. Reuben: No, that is the marking.

The Witness: This (indicating).

By Mr. Block:

Q. Down at the bottom, Mrs. Surowitz.

A. It looks like my handwriting here.

153 Yes, right here (indicating). It looks like mine.

Q. Did Mr. Brilliant bring you Exhibit No. 1 for you to sign?

A. Yes.

Q. Did you discuss that document with him at any time prior to the date on which you signed it?

A. No, I didn't.

Q. Can you tell us, Mrs. Surowitz, why you did not tender your shares of stock pursuant to the offer which is attached to your complaint?

A. I don't know. Can you explain to me what you mean? I don't understand what you are talking about.

154 Q. Did you understand that there was a solicitation for tender of Hilton Hotels Corporation stock made by Hilton Hotels Corporation?

A. What does it mean, "tender"? I don't understand the word.

Q. Under what name are these shares held, Mrs. Surowitz?

A. Under my own.

Q. And do you hold any of the shares beneficially other than in your own name? Does anyone hold any shares for you?

A. No.

Q. Did you consult with anyone other than Mr. Brilliant prior to the time that you wrote the letter which is Exhibit No. 1 about its terms?

A. Just with Mr. Brilliant.

Q. And you don't recall now what Mr. Brilliant's business or occupation is?

A. I don't know.

Q. Is the name "149 Fifth Avenue Corporation" familiar to you, Mrs. Surowitz?

A. I don't know. I never knew where he works or what he does.

Q. Did you ever meet Mr. Watt sitting at your left
155 before you came to Chicago this time?

A. This fellow (indicating)?

Q. Yes.

A. I met him yesterday only.

Q. Did you ever meet this gentleman, Mr. Rockler, before yesterday?

A. Yes, I met him once.

Q. Where did you meet him?

A. He came into my home.

Q. When did he come into your home?

A. A couple of months ago. I don't remember what date it was.

Q. Was it before or after you signed the complaint in this case?

A. I really don't remember whether it was before or after. I can't recall.

Q. Who brought him to your home, Mrs. Surowitz?

A. My son-in-law.

Q. Mr. Brilliant?

A. Yes.

Q. Did you call Mr. Rockler and ask him to come to your home?

A. No, I didn't call him.

Q. Have you agreed to pay any fee to Mr. Rockler?

156 Mr. Watt: I think I am going to object to the question. I don't think that the fee arrangements that are involved here have any relevancy or materiality to the case.

Mr. Block: Would you answer the question? She will read it back.

Mr. Watt: I am going to instruct the witness not to answer.

By Mr. Block:

Q. Do you refuse to answer the question?

A. Yes.

Q. Do you have any fee arrangements with Mr. Brilliant?

A. No.

Q. Do you have any fee arrangements with Mr. Watt?

A. No.

Q. Have you paid the filing fee for filing Surowitz vs. Hilton Hotels Corporation?

Mr. Watt: I object to the question and I instruct the witness not to answer.

By Mr. Block:

Q. You refuse to answer that question, Mrs. Surowitz?

A. Yes.

Q. After Mr. Brilliant read the complaint in this 157 to you, did you then immediately sign it?

A. After he read it, I signed it.

Q. You made no changes in it from the way he read it to you, did you?

A. No.

Q. Do you have any claims or causes of action against the defendants in this case other than those which were set forth in the complaint, Mrs. Surowitz?

A. What do you mean by that? Can you explain it to me?

Q. You don't understand that question?

A. I don't.

Q. Except for Exhibit No. 1 which is that letter—would you hand that back to Mrs. Surowitz?—have you had any other correspondence with any of the defendants in this case?

A. I don't remember of anything like that.

Q. Have you turned over all the correspondence that you have had with any of the defendants to your attorney?

A. I turned it over to my son-in-law.

Q. Mr. Brilliant?

A. Mr. Brilliant, yes.

Q. Have you ever had any conversations with any 158 of the individual defendants in this case?

A. Not me.

Q. Have any such conversations ever been reported to you, Mrs. Surowitz?

A. Not that I know about.

Q. Have you ever made any demand on Hilton Hotels Corporation to bring this action other than the letter which is Exhibit No. 1?

A. What do you mean by it? Can you explain to me just that question?

Mr. Block: Read the question back, please.

(Question read.)

By the Witness:

A. I don't remember anything like that. I don't know.

159 By Mr. Block:

Q. You don't understand that question?

A. I don't know. I don't understand it. I don't know what to answer you on that.

Q. Do you know personally any of the defendants in this case, and I will read their names to you, Mrs. Surowitz: Conrad N. Hilton, Robert P. Williford, Robert J. Caverly, Joseph P. Binns, Spearl Ellison, Henry Crown, Horace C. Flanigan, Benno M. Bechhold, Y. Frank Freeman, Willard W. Keith, Lawrence Stern, Sam D. Young, Fritz B. Burns, Vernon Herndon, Herbert C. Blunck, Charles L. Fletcher, Robert A. Groves, Joseph A. Harper, Barron Hilton.

Do you know any of those people?

A. No.

Q. Do you know anything at all about them that would indicate that they are not in your judgment men of honesty and integrity?

A. I don't know anything about them.

Q. Mrs. Surowitz, your affidavit which you signed on December 12, 1963, indicates that you have information and belief as to all of the matters alleged in the complaint except those specifically enumerated in your affidavit, 160 and I am going to ask you about each one of these paragraphs.

Paragraph 6 which you allege as being to your knowledge true and correct states that:

"In December of 1962 and January of 1963, the individual defendants, as the officers and directors having control over the affairs of the defendant Hilton Hotels Corporation, caused the defendant corporation to issue a document entitled, 'Letter of Transmittal,'" and so forth.

Can you tell me on what basis you make the statement that these individual defendants had control over the affairs of the Hilton Hotels Corporation?

A. I don't understand it and I don't know nothing about it.

Q. Would your answer be the same if I asked you about paragraphs 6 and 7 of counts 1, 2, 3, 4, and 5, the last sentence of paragraph 13 in counts 1, 2, 5 and 6, and the last sentence in paragraph 10 of counts 3 and 4, paragraph 5 of count 6, the last sentence in paragraph 14 of 161 counts 7, 8 and 11, and the last sentence of paragraph 12 of counts 9 and 10?

Mr. Watt: I object to the question. No witness under any circumstances could answer a question such as that unless the precise language which is referred to in each of those paragraphs or sentences is shown to the witness.

Mr. Block: You don't have to say anything more. I am glad to go through each sentence and I am willing to pay the cost of the reporter if the answer isn't the same. You just take all the time you want, Mr. Watt, believe me.

By Mr. Block:

Q. Paragraph 7 alleges:

"In making the offer above described, the individual defendants stated in writing, in the Offer of December 17, 1962 (Exhibit B attached hereto), which document was transmitted through the United States Mails to shareholders of the defendant corporation, the reason why the offer was being made, as follows—"

162 and there follows a quotation:

"No other statement of reasons appears in any of the above-designated documents."

Upon what facts do you make that statement under oath, Mrs. Surowitz?

A. I don't know nothing, I don't understand this, and I don't know, I can't answer you on that. I don't know.

163 Q. The last sentence of paragraph 13 alleges:

"Plaintiff has heretofore protested to the defendant corporation against the gross impropriety of the acts set forth above."

Will you tell me the facts upon which you made that allegation under oath? Would your answer be the same?

A. I don't know.

Q. You don't understand it?

A. I don't know nothing about it.

Q. That same sentence appears as the last sentence of paragraph 10 of Counts 3 and 4. Would your answer be the same to my question concerning the factual basis for that allegation?

A. I don't know. I can't answer you on that neither because I don't know.

Q. Paragraph 5 of Count 6 alleges the following:

"This action is not a collusive one instituted for the

purpose of conferring upon a court of the United States jurisdiction of a cause of action over which it would not otherwise have jurisdiction."

164 Can you give me the factual basis upon which that allegation is made under oath?

A. I don't know. I can't tell.

Mr. Reuben: Mr. Watt, why don't you stipulate with Mr. Block—

Mr. Block: Now look, I am not going to ask for any stipulations from Mr. Watt. If you want to ask the questions, you can do it. At the moment I will ask them.

By Mr. Block:

Q. The last sentence of paragraph 14 of Counts 7, 8 and 11 reads as follows:

"Plaintiff has heretofore protested to the defendant corporation against the gross impropriety of the acts set forth above."

Can you give me the factual basis upon which that allegation is made under oath, Mrs. Surowitz?

A. I can't. I don't know.

Q. Now—

Mr. Crown: Could I have that answer read back? I didn't hear the last part of it.

(Record read.)

165 By Mr. Block:

Q. The last sentence of paragraph 12 of Counts 9 and 10 reads:

"Plaintiff has heretofore protested to the defendant corporation against the gross impropriety of the acts set forth above."

Can you tell me the factual basis upon which you made that statement under oath, Mrs. Surowitz?

A. No, I don't understand it.

Q. Now the balance of the entire complaint you have alleged as having been made on information and belief, and you believe them to be true. Can you tell me the information you have with respect to the following allegation, paragraph 8 of Count 1:

"Said explanation being that set forth in paragraph 7 was false and misleading and was known by the individual defendants to be false and misleading in the respects indicated hereinafter."

Mr. Block: Would you read that question back?
(Record read.)

166 The Witness: I can't give it to you because I can't explain it to you and I don't know.

By Mr. Block:

Q. Do you know of any action, wrongful or improper, done by any officers or directors of Hilton Hotels Corporation, Mrs. Surowitz?

A. I couldn't—all I know is that my stock wasn't right and that's all.

Q. The second sentence of paragraph 8 reads:

"Said false and misleading statement, the offer to purchase 300,000 shares of common stock described above, and the documents specified above which were sent out by the individual defendants to the shareholders, were integral parts of a manipulative and deceptive device or contrivance and of a scheme to defraud and constituted acts and practices carried out in the execution of said device and scheme all in violation of a specified provision of the Securities & Exchange Act."

Can you give me the information upon which you
167 formed the belief that this manipulative or deceptive device or contrivance was carried on?

A. I can't explain it to you in my words. I don't know.

Q. Paragraph 8-A alleges that:

"The individual defendants were engaged in a plan and scheme to make it possible for defendant Conrad Hilton and other officers and directors to dispose of shares in the defendant corporation at prices more favorable than they could obtain on the market at the time when they knew or should have known that the business affairs of the defendant corporation would shortly lead to a substantial drop in the value of the shares."

Can you give me the information upon which you formed the belief that is set forth in that sentence, Mrs. Surowitz?

A. I don't know. I can't explain it.

168 Q. You have charged in the second sentence of 8(a) that:

"Furthermore, the individual defendants were engaged in a plan and scheme to make it possible for defendant Henry Crown to dispose of large holdings in the common stock of the defendant Corporation held by him individually, by other entities controlled by him, by members of his family, and by trusts established for various members of his family, as to some of which he was grantor, beneficiary, or remainderman, at prices above the market prices for such stock, under circumstances whereby such disposal of stock would not become publicly known."

Can you tell me the facts upon which you base that charge?

A. I don't know.

Q. Paragraph 8(b), count 1, charges:

"The individual defendants acted in such a way as to conceal from the defendant Corporation and from

169 its stockholders the true purpose of the offer to purchase described above, and in such a way as to make it appear that it was to the Corporation's advantage to effect such a purchase of approximately 10 per cent of its outstanding shares."

Can you tell me the facts upon which you made that allegation?

A. No, I don't know. I don't know.

Q. Do you know any facts, Mrs. Surowitz, at all upon which you based these allegations?

A. I don't know. I can't give you no facts because I don't understand it.

Mr. Block: Could we take a short recess, please?

(Whereupon a five minute recess was taken.)

Mr. Block: Let the record show that Mr. Watt and Mr. Block have now discussed the further questioning with respect to the information upon which the witness has formed the belief to which she swore and it is agreeable
170 that I ask the following question:

By Mr. Block:

Q. Mrs. Surowitz, if I ask you about each of the other allegations of the complaint to which you have sworn on information and belief as being true and correct and that you believe them to be true and correct, your answer would be the same, would it not, that you have no information as to those?

A. I have no information because my son-in-law, I left it to him, and he was the one that knew all about it.

Q. When did you come to Chicago, Mrs. Surowitz?

A. Yesterday.

Q. Where did you stay last night?

A. By Mr. Rockler.

Q. With Mr. Rockler?

A. Yes.

Q. Who paid your way to Chicago?

A. My son-in-law.

Q. Did you pay the filing fee for this lawsuit?

Mr. Watt: I object to the question. That has already been covered.

Mr. Block: You are right.

171 Mr. Watt: I instruct the witness not to answer.

By Mr. Block:

Q. Do you have any agreement with respect to the payment for the filing fee or other costs and disbursements in this lawsuit?

A. I have no agreement.

Mr. Watt: I object to the question.

Mr. Block: The question has been asked and answered.

Mr. Watt: I didn't hear the answer, if there was an answer.

Mr. Block: Would you read the answer back, please?

(Answer read by the reporter.)

Mr. Reuben: I would like to ask you—

Mr. Watt: Is Mr. Block through?

Mr. Reuben: I thought he was.

Mr. Block: No.

By Mr. Block:

Q. Your son-in-law, Mrs. Surowitz, is named Irving Brilliant. How long has he been married to your daughter?

A. Nine years, going on ten.

172 Q. Do they live with you?

A. No.

Mr. Block: That is all. Thank you very much.

Would you waive signature?

Mr. Watt: May we have about five minutes? There may be some questions I would want to put to the witness.

(Whereupon the plaintiff and counsel left the conference room at 11:10 a.m.)

Mr. Block: Let the record show that Mrs. Surowitz left the room with her attorney.

(Whereupon the deposition was resumed at 11:20 a.m.)

Mr. Watt: I just have a few questions.

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Examination by Mr. Watt.

Q. Mrs. Surowitz, let me show you a document which is attached to the complaint as Exhibit A which bears the date December 17, 1962. That is a copy. Do you recall receiving such a document?

A. Yes.

Q. Is the date December 17, 1962, about the date when you received it?

A. About that.

Q. When you received that, what, if anything, did you do?

A. I turned it over to my son-in-law.

Q. Did you at that time ask him anything about it?

A. I asked him and he said that there is something wrong with the stock.

Mr. Block: I will move to strike the answer.

By Mr. Watt:

Q. Do you recall receiving any of the other documents such as Exhibit B and C on the approximate dates which appear on them?

A. I had these letters that I received and I turned them over to him and he handled it, Mr. Brilliant, he took
174 care of it.

Mr. Watt: Do you have the document which you marked as Exhibit 1?

Mr. Block: Yes (handing document to counsel).

By Mr. Watt:

Q. There has been marked a document as Deposition Exhibit No. 1, Mrs. Surowitz. I believe you have identified your signature?

A. Yes.

Q. Did you have any discussion about Hilton Hotels Corporation at the time Mr. Brilliant brought that to you?

Mr. Block: Just a minute. I will object to the form of that question.

By Mr. Watt:

Q. Just go ahead and answer, please, Mrs. Surowitz.

A. Yes, I had this letter, and he discussed it with me and he said that he would like to take action against—

Q. Did you finish your answer?

A. He said he would take care of it, that's all. I left it to him. I left all these things to him because he knows more about it.

175 Q. Do you own other stocks, that is, other than Hilton Hotels Corporation?

A. Yes.

Q. Do you know approximately when you first purchased any stock at all in any corporation?

A. I don't remember when I had it purchased. I had some money and I gave it to him whenever it was ready, he invested it for me.

Q. Was the procedure you used—

Mr. Zax: Would you read back the last question and answer? There was some confusion here.

(Record read by the reporter.)

By Mr. Watt:

Q. The "him" that you used in that answer—

A. Mr. Brilliant, my son-in-law.

Q. And was the procedure you used for buying stock the same, you turned money over to Mr. Brilliant?

A. I turned money over to Mr. Brilliant.

Q. Just so we have the information on the record, Mrs. Surowitz, could you state the extent of your schooling?

A. Yes.

176 Q. Would you explain it, please?

A. Well, I didn't have much of a training. All I had is a Jewish—I don't go—

Q. Jewish schools?

A. Jewish schools.

Q. About how many years?

A. About six or seven years, that's about all.

177 Q. Other than the income you received from some stocks that you own and your pay as a seamstress, do you have any other income?

A. Well, except that I work and except that I have some money in the bank, that's all.

Q. Has part of your income for a number of years been from dividends from the Hilton Hotels Corporation stock?

Mr. Block: I will object to that question.

Mr. Watt: Just go right ahead and answer, Mrs. Surowitz.

The Witness: What?

By Mr. Watt:

Q. Has part of your income been from dividends received on the Hilton Hotels Corporation stock?

A. That is part, yes, part of the dividends was.

Q. Did there come a time when your dividends stopped?

A. Yes.

Q. Could you indicate approximately when that was?

A. It was about sometime last year.

Q. 1963?

A. 1963 or 1962, I really don't remember what year
178 it was.

Q. On that occasion did you have a discussion with Mr. Brilliant?

A. Yes.

Q. What, if anything, was discussed then?

Mr. Block: I will object to that. That certainly is improper.

Mr. Watt: Go ahead and answer the question.

By the Witness:

A. Well, he said that he will try to see what was wrong, that I don't get my dividends.

By Mr. Watt:

Q. Now at the time, Mrs. Surowitz, that you signed the complaint which Mr. Block has asked you about, did you discuss Hilton Hotels Corporation with your son-in-law?

A. Yes.

Q. Did he explain to you what he thought was wrong with the handling of certain transactions by the corporation?

A. Yes, he explained it to me.

Q. And after that explanation to you, did you sign the complaint?

A. Yes.

179 Mr. Watt: I have no further questions.

Redirect Examination by Mr. Block.

Q. Mrs. Surowitz, when we adjourned this deposition, you went into a room with your counsel, did you not? Just a few minutes ago?

A. Well, we went into the room.

Q. And at that time isn't it correct that either Mr. Rockler or Mr. Watt told you that they would ask you the last three questions that were asked you and told you what to answer?

A. I don't know what I—we didn't say anything.

Q. Pardon me?

A. We didn't say nothing about it.

Q. You didn't say anything? How long were you in the room?

A. I didn't time myself.

Q. If I told you you were in the room about 15 minutes, would your answers still be that you didn't say anything while you were in there?

A. No.

Q. At that time isn't it correct that they told you that they would ask you these questions about your discussions with Mr. Brilliant?

180 A. I refuse to answer that.

Mr. Block: That's all. This is adjourned.

Mr. Watt: The deposition is not adjourned, sir.

Mr. Block: It is adjourned.

Mr. Watt: Miss Reporter, will you please remain? The deposition is not adjourned until all counsel have finished their examination. I don't think Mr. Block can terminate the deposition simply by walking out of the room.

Mr. Block: I am in the room.

Mr. Watt: I am glad you are, sir.

Recross Examination by Mr. Watt.

Q. Mrs. Surowitz, so that the record is perfectly clear, and there is no reason whatsoever for you to have any concern about answering fully and correctly and honestly all the questions that are put to you, we retire to an office which Mr. Block—

Mr. Block: Now wait just a minute. You are not going to testify in this case, and if you go any further with
181 this kind of a statement to this witness who is under oath and under cross-examination, we will adjourn this

and we will go over to Judge Hoffman right now, because if you don't, I will, Mr. Watt.

Mr. Watt: You mean *that*—

Mr. Block: You can make up your mind, but you are not going to make a speech to this witness. If you want to ask her a question, ask it, but don't make a speech.

Mr. Watt: I am not making a speech, Mr. Block.

Mr. Block: I don't care what you think you are doing. I know what the record shows. Now ask a question or if you go any further with this, I don't know what my brother counsel will do, but I will take this before the Federal Judge.

Mr. Friedman: We will join you.

By Mr. Watt:

Q. Mrs. Surowitz, at the time we took an adjournment some minutes ago, did we go to an office?

A. Yes.

182 Q. You and I and Mr. Rockler?

A. Yes.

Q. Did we have a brief discussion?

A. Yes.

Mr. Watt: I have no further questions.

Subscribed and sworn to before me this 25th day of February, A. D., 1964.

Notary Public.

183 United States of America,
Northern District of Illinois, }
Eastern Division, } ss:
State of Illinois, }
County of Cook. }

I, Dorothy L. Brackenbury, a notary public in and for the County of Cook and State of Illinois, do hereby certify that Dora Surowitz was by me first duly sworn to testify the whole truth and that the above deposition was recorded stenographically by me and was reduced to typewriting under my personal direction.

I further certify that the said deposition was examined and read over by the said deponent and was signed by her, and that the said deposition constitutes a true record of the testimony given by said witness.

I further certify that the exhibit attached to said deposition was offered in evidence and marked for identification as it is set forth in the said deposition.

I further certify that the deposition was taken at the time and place specified in the annexed notice, and that the taking of said deposition commenced on the 25th day of February, 1964, at 10:00 o'clock in the morning, and was completed at 11:40 of said day.

184 I further certify that Messrs. Richard F. Watt and Walter J. Rockler, 105 W. Adams Street, Chicago, Illinois, appeared as attorneys for the plaintiff; Messrs. Samuel W. Block and Keith F. Bode, 135 South LaSalle Street, Chicago, Illinois, appeared as attorneys for defendant Henry Crown; Messrs. William J. Friedman and Stanley R. Zax, 208 South LaSalle Street, Chicago, Illinois, appeared as attorneys for defendants Lawrence Stern, Willard Keith and Spearl Ellison; and Messrs. Don. H. Reuben and Lawrence Gunnels appeared as attorneys on behalf of defendant Hilton Hotels Corporation.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

In witness whereof, I have hereunto set my hand and affixed my seal of office, at Chicago, Illinois, this day of, 1964.

Dorothy L. Brackenbury,
*Notary Public, Cook County,
Illinois.*

185a

Surowitz Dep. Ex. No. 1.

January 22, 1963

Hilton Hotels Corp.
720 S. Michigan Avenue
Chicago 5, Illinois

Gentlemen:

As a stockholder, I protest and challenge propriety of proposed plan to redeem company's common stock and reduce its capitalization as set forth in your letters of December 17 and January 7.

I also challenge propriety of plan to purchase shares of Hilton Credit Corp. as set forth in your letter of January 7. Proposed actions serve no corporate interest and seem clearly detrimental to the welfare of the corporation and most of its stockholders.

/s/ Dora Surowitz,
1299 Ocean Avenue,
Brooklyn, New York.

186 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—63-C-2248) • •

NOTICE AND MOTION.

To: Walter J. Rockler

Richard F. Watt

105 West Adams Street

Chicago 3, Illinois

Alan J. Altheimer

Lionel G. Gross

One North LaSalle Street

Chicago 2, Illinois

Please Take Notice that on Wednesday, February 26, 1964, at the hour of 10:00 A.M., or as soon thereafter as counsel may be heard, counsel for all defendants shall appear before his Honor Judge Julius J. Hoffman in the Court Room usually occupied by him in the Federal Court House, or before such other Judge as may be sitting in his place and stead, and shall then and there move that the complaint heretofore filed herein be dismissed upon the grounds:

1. It is a sham pleading, and
2. Plaintiff, Dora Surowitz, is not a proper party plaintiff,

and shall in support of said motion tender the stenographic transcript of the deposition of Dora Surowitz taken on Tuesday, February 25, 1964, at which time and place you may appear if you so see fit. In presenting this motion on the grounds set forth above, defendants do not waive their

right to file any other motions on or before March 2, 1964, the date heretofore set for the filing of such motions by the Court.

Samuel W. Block,
Keith F. Bode,
Attorneys for Henry Crown.

187

William J. Friedman,
Stanley R. Zax,
*Attorneys for all individual
Defendants except Henry
Crown,*

A. Leslie Hodson,
Don H. Reuben,
*Attorneys for Hilton Hotels
Corporation.*

Received a copy of the above and foregoing Notice and Motion, before the hour of 4:00 P.M., this 25th day of February, 1964.

/s/ Walter J. Rockler,
/s/ Donald G. Gillies.

188

UNITED STATES DISTRICT COURT.

Northern District of Illinois,

Eastern Division.

Name of Presiding Judge, Honorable Julius J. Hoffman.

Cause No. 63 C 2248

Date February 26, 1964

Title of Cause

Dora Surowitz, Plaintiff v. Hilton Hotels Corporation, et al., Defendants.

Notice & Motion

Brief Statement of Motion

Motion to dismiss action.

Affidavit

Deposition of Pltff.

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Samuel W. Block, Keith F. Bode—135 S. LaSalle.

William J. Friedman, Stanley R. Zax—208 S. LaSalle St.

A. Leslie Hodson, Don H. Reuben—Prudential Plaza for defendants.

Names and Addresses of other counsel entitled to notice and names of parties they represent.

Walter J. Rockler, Richard F. Watt—105 W. Adams.

Alan J. Altheimer, Lionel G. Gross—One North LaSalle for Plaintiff.

Lv. to Defts. to file deposition of Pltff. instanter. Lv. to Defts. to file affidavit of E. T. Cassin, instanter. Pltff. gv. 15 days to file documents deemed to be appropriate in opposition to Defts.' motion to dismiss action. Defts. gv. 5 days thereafter to reply. Hrg. on Defts.' motion to dismiss set for March 23, 1964 at 10 a.m. Time for Defts. to file responsive pleading to Complaint be & is extended to & including April 2, 1964.

Notices Mailed Feb. 27, 1964.

AFFIDAVIT.

State of New York, }
County of New York. } ss.

I, IRVING G. BRILLIANT, having been duly sworn, hereby depose and say:

1. I reside at 650 Ocean Avenue, Brooklyn, New York, and am a son-in-law of Mrs. Dora Surowitz of 1299 Ocean Avenue, Brooklyn, New York, plaintiff in the above cause.

2. I am a graduate of the College of the City of New York, where I was elected to Phi Beta Kappa, and of the Harvard Law School, and have a Master of Arts degree in economics from Columbia University. I worked for the United States Government in the capacity of an attorney for many years, but have never actively engaged in commercial legal practice. I have acted over the past ten years as an advisor to various individuals, institutions, and companies with regard to the proper investment of their funds.

196 3. In December of 1962, my immediate family, namely, my wife, Benice Brilliant, the estate of my deceased mother, Bessie Brilliant, a trust for my children Marc and Nicole Brilliant, and my mother-in-law, Mrs. Dora Surowitz, owned in excess of 2,350 shares of common stock of Hilton Hotels Corporation, representing in the aggregate an original investment of approximately \$45,000.00, and also \$10,000.00 of a 6% debenture due in 1984, and 110 stock purchase warrants of said corporation. These securities, excluding the debenture and warrants, had been purchased prior to 1960 and continued to be owned by the members of my family to and including December of 1962, and to and including this date. The debenture and warrants had been purchased at their original issue date. Some of the securities mentioned in this paragraph have been registered in the names of the respective owners, as the records of Hilton Hotels Corporation can attest; others of these securities were held in street name.

4. Beginning in or about the year 1957, my mother-in-law, Mrs. Dora Surowitz, in reliance upon my suggestions and advice, began purchasing small amounts of stock. She purchased, with her own money, 100 shares of Hilton Hotels Corporation common stock on August 1, 1957 through Bear, Stearns & Co., at a price of \$20 $\frac{1}{4}$, primarily for income; a copy of the confirmation of this purchase is attached hereto as Exhibit A. Said 100 shares of stock were held in street name forher continuously from the time of purchase to

October 1963, as the copies of brokers' statements (Ex-
197 hibits B to I inclusive attached hereto) indicate; in

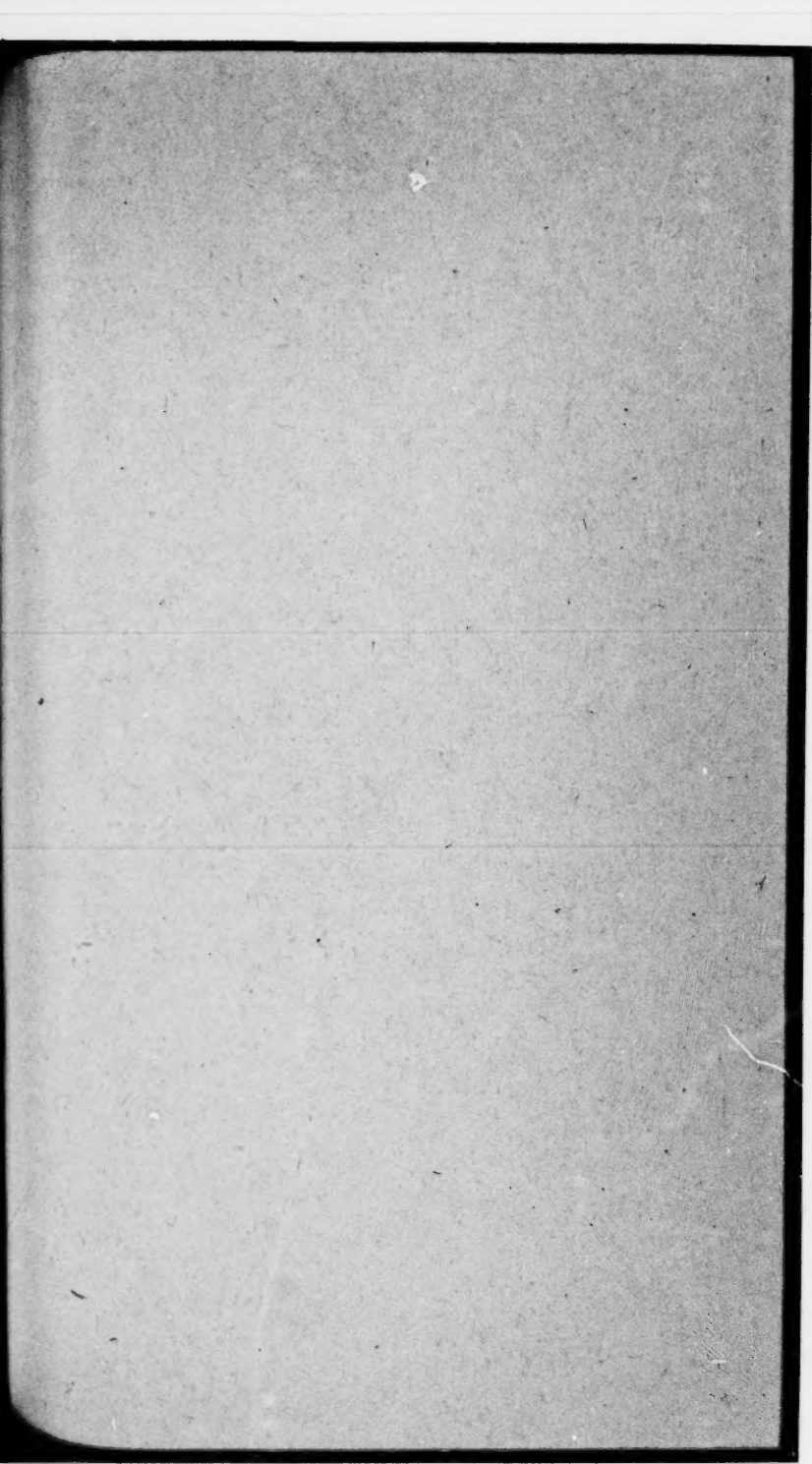
October 1963 said shares were placed in the name of Mrs. Dora Surowitz as a stockholder of record.

5. My mother-in-law, Mrs. Dora Surowitz, is a hard-working woman of limited education, who has, to my best knowledge, been working as a dressmaker since the early 1930's; she is now about 64 years of age. She is a native

of Poland. She reads very little English and has some difficulty in understanding English, except with regard to ordinary day-to-day matters. She does not have the education or experience to understand corporate and securities transactions; recognizing her limitations, she has repeatedly told me that she relies very largely on my suggestions and advice in these matters. Consequently, I was responsible for inducing her to purchase small amounts of common stocks; I believed that with her limited income and resources she could best implement her income and achieve a modest degree of security by means of such investments. From time to time, she discusses her financial affairs with me, and I give her advice and suggestions.

6. Sometime in late December 1962, Mrs. Surowitz brought to me the papers relating to the tender offer of Hilton Hotels Corporation (Exhibits A and B to the Complaint herein) and asked me what it was about. This she was wont to do with most papers received by her respecting her divers limited stock holdings. I told her I was studying the matter to decide what should be done.

198 7. I was in Chicago late in December 1962 or early in January 1963. I usually contact Walter Rockler whenever I am in Chicago, ordinarily about once a year. We have been friends since about 1947. We discussed the Hilton tender offer; Mr. Rockler and I reached the conclusion that the proposed transaction was questionable and should be objected to. One or two weeks later, following several telephone conversations between Mr. Rockler and me, Mr. Rockler drafted or had drafted a letter of complaint to the corporation protesting, on behalf of Mrs. Surowitz, the tender offers affecting Hilton Hotels Corporation and Hilton Credit Corporation. I explained the letter to Mrs. Surowitz and told her that I had reviewed the matter with an attorney in Chicago. She signed the letter, and I mailed it to the corporation.



8. Thereafter, I visited the New York Stock Exchange and studied its file on tender offers by various corporations listed on the Exchange. I also studied the volume of and prices at which Hilton Hotels Corporation common stock had been traded on the New York Stock Exchange prior to and subsequent to the tender offer. In addition, I studied the annual reports of Hilton Hotels Corporation in order to ascertain the number of shares of stock issued with respect to property acquisitions, and to determine which properties had been subsequently disposed of. I also analyzed the Corporation's acquisitions of its own stock over a period of years.

199 9. I communicated the results of the above research and analysis to Mr. Rockler, both by letter and in telephone conversations.

10. During 1963 the price of Hilton Hotels Corporation common stock declined; in the summer of 1963 the dividend was passed. These circumstances were matters of real concern to the members of my family, including Mrs. Surowitz. Again, Mrs. Surowitz asked me for my advice with respect to the Hilton stock. I told her that the attorney in Chicago with whom I had discussed the matter was of the opinion that the officers and directors had engaged in wrongful acts damaging to the corporation and its shareholders. I also told her that the attorney believed, and I agreed, that one way to prevent further mismanagement and to correct the effects of prior wrongful acts was to bring suit. Mrs. Surowitz and I discussed the matter of bringing a law suit against the corporation and its officers and directors. I told Mrs. Surowitz that there would be expenses involved in suing and that, since members of the family owned a substantial amount of Hilton stock it was reasonable to assume that the members of the family would be willing to pay a major part of the expenses.

11. Mrs. Surowitz stated that she was willing to bring

suit, and I advised Mr. Rockler of this. I considered joining as a party plaintiff in my capacity as trustee of the trust for my minor children, or as the person responsible for handling my mother's estate. I also considered—
200 and discussed the matter with my wife—the advisability of my wife joining as a plaintiff. My wife is and has been quite seriously ill for the past seven years and has spent an average of about eight weeks a year in the hospital; consequently, we concluded that she ought not be named as a party plaintiff. I also determined that I should not sue in a fiduciary capacity because of possible legal complications that might be entailed. Before reaching these conclusions, I discussed the facts and circumstances with Mr. Rockler.

12. Later Mr. Rockler sent the formal complaint to me. I read and explained it to Mrs. Surowitz. I told her that the charges in the complaint reflected the investigation and study of Mr. Rockler and myself and that, in my opinion, the charges of wrongdoing were soundly based.

IRVING G. BRILLIANT

Subscribed and sworn to before me this 9th day of March 1964.

FLORENCE A. MASON

Seal

Notary Public.

QUANTIT

2

BEAR, STEARNS & CO.

ONE WALL STREET, NEW YORK 5, N. Y.

QUANTITY OF SHARES OR PRINCIPAL AMOUNT OF BONDS
BOUGHT SOLD

100

HILTON HOTELS CORP

DESCRIPTION

PRICE

20 3/4

MO.	DAY	YR.
8	01	57
TRADE DATE		

MO.	DAY	YR.
8	07	57
SETTLEMENT DATE		

AMOUNT	INTEREST STATE TAX OR ODD LOT FEE	FEDERAL TAX	REG. FEE AND/OR POST.	COMMISSION
207500				2538

TOTAL AMOUNT
210038

OFF.	ACCOUNT	T	C. M.
6	51672	92	

\$	†	◇
	11	

SEE REVERSE SIDE FOR EXPLANATION OF SYMBOLS T † ◇

MRS DORA SURAWITZ
1299 OCEAN AVE
BROOKLYN 30 NY

EXHIBIT A

THE TERMS, CONDITIONS AND AGREEMENT CONTROLLING THIS TRANSACTION ARE PRINTED ON THE REVERSE SIDE OF THIS CONFIRMATION. PLEASE READ THEM CAREFULLY.

MRS DORA SURAWITZ
1299 OCEAN AVE
BROOKLYN 30 NY

PERIOD ENDING
12/31/58
MO. DAY YR.

YOUR ACCOUNT NO. 7
6 51672

IN ACCOUNT WITH

SHEET

BEAR, STEARNS & Co.

1

NEW YORK 5, N. Y.

CASH,
MARGIN
SHORT
SPEC. MISC.
SPECIAL SUBS'N
WHEN ISSUED CASH
WHEN ISSUED MARGIN
WHEN ISSUED SPEC. MISC.
SPECIALIST

1.
2.
3.
4.
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6.
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8.
9.
IF THIS IS A GENERAL ACCOUNT AND WE MAINTAIN A SPECIAL MISCELLANEOUS ACCOUNT FOR YOU UNDER SECTION 4 (P) (4) OF REGULATION T ISSUED BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THIS IS A COMBINED STATEMENT OF YOUR GENERAL ACCOUNT AND SPECIAL MISCELLANEOUS ACCOUNT. THE PERMANENT RECORD OF THE SPECIAL MISCELLANEOUS ACCOUNT AS REQUIRED BY REGULATION T IS AVAILABLE FOR YOUR INSPECTION AT YOUR REQUEST.

IF THIS STATEMENT IS NOT IN ACCORDANCE WITH YOUR RECORDS PLEASE NOTIFY US IMMEDIATELY.

DATE	SECURITIES		DESCRIPTION	PRICE	AMOUNT				BALANCE	
	BOUGHT OR RECEIVED	SOLD OR DELIVERED			DEBIT		CREDIT		DEBIT UNLESS MARKED	CR
12/31/58	DIV ON	100	BALANCE FORWARD HILTON HOTELS CORP	DIV			30.00		203238CR	
	100		CHARTER OIL LTD	BAL					206238CR	
	100		HILTON HOTELS CORP	BAL						
	2		KAYSER ROTH CORP	BAL						
	200		KILEMBE COPPR COBALT	BAL						

EXHIBIT B

MRS DORA SURAWITZ
1299 OCEAN AVE
BROOKLYN 30 NY

PERIOD ENDING
12/31/59
MO. DAY YR.

YOUR ACCOUNT NO. T
6 51672

IN ACCOUNT WITH

BEAR, STEARNS & CO. 1

NEW YORK 5, N. Y.

CASH.
MARGIN
SHORT
SPEC. MISC.
SPECIAL SUBSC'H
WHEN ISSUED CASH
WHEN ISSUED MARGIN
WHEN ISSUED SPEC. MISC.
SPECIALIST

1.
2.
3.
4. IF THIS IS A GENERAL ACCOUNT AND WE MAINTAIN A SPECIAL MISCELLANEOUS ACCOUNT FOR YOU UNDER SECTION 4 (F) (6) OF REGULATION T ISSUED BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THIS IS A COMBINED STATEMENT OF YOUR GENERAL ACCOUNT AND SPECIAL MISCELLANEOUS ACCOUNT. THE PERMANENT RECORD OF THE SPECIAL MISCELLANEOUS ACCOUNT AS REQUIRED BY REGULATION T IS AVAILABLE FOR YOUR INSPECTION AT YOUR REQUEST.
5.
6.
7.
8.
9.

IF THIS STATEMENT IS NOT IN ACCORDANCE WITH YOUR RECORDS PLEASE NOTIFY US IMMEDIATELY.

DATE	SECURITIES		DESCRIPTION	PRICE	AMOUNT		BALANCE	
	BOUGHT OR RECEIVED	SOLD OR DELIVERED			DEBIT	CREDIT	DEBIT UNLESS MARKED	CR
NEW 27			BALANCE FORWARD				1008	72 CR
DEC 1	DIV ON	100	HILTON HOTELS CORP	DIV		30 00		
DEC 8		53	HILTON CREDIT CORP	DEL				
DEC 15	200		DEVON PALMER OILS		181 92			
DEC 15			CDN FUNDS 85CTS					
DEC 15			UNSOLICITED					
DEC 24	DIV ON	30	THE MARTIN CO	DIV		12 00	868	80 CR
	100		CHARTER OIL LTD	BAL				
	500		DEVON PALMER OILS	BAL				
	100		HILTON HOTELS CORP	BAL				
	2		KAYSER ROTH CORP	BAL				
	30		THE MARTIN CO	BAL				

EXHIBIT C

MRS DORA SURAWITZ
1299 OCEAN AVE
BROOKLYN 30 NY

PERIOD ENDING
12/30/60
MO. DAY YR.

YOUR ACCOUNT NO. 7
6 51672

IN ACCOUNT WITH

SHEET

BEAR, STEARNS & Co. 1
New York 3, N. Y.

CASH,
MARGIN
SHORT
SPEC. MISC.
SPECIAL SUBSC'N
WHEN ISSUED CASH
WHEN ISSUED MARGIN
WHEN ISSUED SPEC. MISC.
SPECIALIST

- 1.
- 2.
- 3.
4. IF THIS IS A GENERAL ACCOUNT AND WE MAINTAIN A SPECIAL MISCELLANEOUS ACCOUNT FOR YOU UNDER SECTION 4 (F) (3) OF REGULATION T ISSUED BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THIS IS A COMBINED STATEMENT OF YOUR GENERAL ACCOUNT AND SPECIAL MISCELLANEOUS ACCOUNT, THE PERMANENT RECORD OF THE SPECIAL MISCELLANEOUS ACCOUNT AS REQUIRED BY REGULATION T IS AVAILABLE FOR YOUR INSPECTION AT YOUR REQUEST.
- 5.
- 6.
- 7.
- 8.
- 9.

IF THIS STATEMENT IS NOT IN ACCORDANCE WITH YOUR RECORDS PLEASE NOTIFY US IMMEDIATELY.

DATE	SECURITIES		DESCRIPTION	PRICE	AMOUNT		BALANCE	
	BOUGHT OR RECEIVED	SOLD OR DELIVERED			DEBIT	CREDIT	DEBIT UNLESS MARKED	CR
DEC 01	DIV ON	100	HILTON HOTELS CORP	DIV				
DEC 21	DIV ON	31	THE MARTIN CO	DIV		37.50		
						15.50		
	100		HILTON HOTELS CORP	BAL				
	31		THE MARTIN CO	BAL				
								530.00 CR

EXHIBIT D

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES AND INCLUDE ANY DIVIDENDS IN YOUR INCOME TAX RETURN FOR THE CURRENT YEAR.
A FINANCIAL STATEMENT OF THIS FIRM IS AVAILABLE FOR YOUR PERSONAL INSPECTION AT ITS OFFICES, OR A COPY WILL BE MAILED UPON WRITTEN REQUEST.

E. & O. E.

ORIGINAL
EMANUEL, DEETJEN & Co.

ESTABLISHED 1929

MEMBERS

NEW YORK STOCK EXCHANGE
MIDWEST STOCK EXCHANGE

AMERICAN STOCK EXCHANGE
COMMODITY EXCHANGE, INC.

79 AVENUE de La GARE
LAUSANNE
SWITZERLAND



EMANUEL, DEETJEN & CO., LTD.
P. O. BOX 1720
HASSAU, BADEN
CABLE ADDRESS
EMANCOCK

120 BROADWAY, NEW YORK 5, N. Y. Display 9-4077
MAIL ALL CHECKS TO THE NEW YORK ADDRESS

MRS DORA SUROWITZ
1299 OCEAN AVE
BROOKLYN NY

PERIOD ENDING
MO. DAY YR.
99 12 66

OFF. ACCT. NO. T
1906852

GENERAL 0.
CASH 1.
MARGIN 2.
SHORT 3.
SPEC. MISC. 4.
PUT & CALL 5.
SUBSCRIPTION 6.
SPECIAL LOAN 7.

IF THIS STATEMENT IS NOT IN ACCORDANCE WITH YOUR RECORDS PLEASE NOTIFY US IMMEDIATELY.

SECURITIES		DESCRIPTION	PRICE	AMOUNT		BALANCE DEBIT UNLESS MARKED CR.
BOUGHT OR RECEIVED	SOLD OR DELIVERED			DEBIT	CREDIT	
50		MARTIN MARIETTA	27 1/8	137481		137481
100		HILTON HOTELS CORP	BAL			
50		MARTIN MARIETTA	BAL			
50		OLIN MATHIESON	BAL			
EXHIBIT E						

REGULAR TRANSACTIONS, IF ANY, WHICH ARE TO BE CLEARED SUBSEQUENT TO THE END OF THE MONTH, ARE NOT INCLUDED. THEY WILL APPEAR IN YOUR ACCOUNT OF THE FOLLOWING MONTH.
PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES AND INCLUDE ANY DIVIDENDS IN YOUR INCOME TAX RETURN FOR THE CURRENT YEAR.
A FINANCIAL STATEMENT OF THIS FIRM IS AVAILABLE FOR YOUR PERSONAL INSPECTION AT ITS OFFICES, OR A COPY WILL BE MAILED UPON WRITTEN REQUEST.
NO AGENT OR EMPLOYEE OF OUR FIRM HAS ANY AUTHORITY TO MAKE ANY REPRESENTATION OR STATEMENT WITH RESPECT TO ANY SECURITY.
If this is a general account and we maintain a special miscellaneous account for you under section 4 (F) (6) of regulation T issued by the Board of Governors of the Federal Reserve System, this is a combined statement of your general account and special miscellaneous account. The permanent record of the special miscellaneous account as required by regulation T is available for your inspection at your request.

THE LAST AMOUNT IN THIS COLUMN
IS YOUR BALANCE

MRS DORA SUROWITZ
1299 OCEAN AVE
BROOKLYN NY

PERIOD ENDING
MO DAY YR
99 83162

OFF. ACCT. NO. T
1906852

GENERAL 0.
CASH 1.
MARGIN 2.
SHORT 3.
SPEC. MISC. 4.
PUT & CALL 5.
SUBSCRIPTION 6.
SPECIAL LOAN 7.

ORIGINAL
EMANUEL, DEETJEN & Co.

ESTABLISHED 1929

MEMBERS

NEW YORK STOCK EXCHANGE
MIDWEST STOCK EXCHANGE

AMERICAN STOCK EXCHANGE
COMMODITY EXCHANGE, INC.

10 AVENUE de la GARE
LAUSANNE
SWITZERLAND



EMANUEL, DEETJEN & CO., LTD.
P. O. BOX 1750
BASSEL, SWITZERLAND
CABLE ADDRESS
EMANSTOCK

120 BROADWAY, NEW YORK 5, N. Y. Dgby 9-077
MAIL ALL CHECKS TO THE NEW YORK ADDRESS

IF THIS STATEMENT IS NOT IN ACCORDANCE WITH YOUR RECORDS PLEASE NOTIFY US IMMEDIATELY.

DATE	SECURITIES		DESCRIPTION	PRICE	AMOUNT		BALANCE DEBIT UNLESS MARKED CR.
	BOUGHT OR RECEIVED	SOLD OR DELIVERED			DEBIT	CREDIT	
8	100		BAL JULY 27TH 1962				152551
8			BRIT AMER CONST MAT	JRL			
9			TFR OF FUNDS	JRL		3825	
9	100		BRIT AMER CONST MAT	DEL			
9	100		HILTON HOTELS CORP	DEL			
9	50		MARTIN MARIETTA	DEL			
9	50		OLIN MATHIESON	DEL			
9	100		SHELL TRANS&T NY SHR	DEL			
7			DEL AGAINST PAYMENT			149500	
1			INT TO AUG 15		516		
			CHECK PAID	CHK	258		
EXHIBIT F							
CR							

REGULAR TRANSACTIONS, IF ANY, WHICH ARE TO BE CLEARED SUBSEQUENT TO THE END OF THE MONTH, ARE NOT INCLUDED. THEY WILL APPEAR IN YOUR ACCOUNT OF THE FOLLOWING MONTH.
PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES AND INCLUDE ANY DIVIDENDS IN YOUR INCOME TAX RETURN FOR THE CURRENT YEAR.
A FINANCIAL STATEMENT OF THIS FIRM IS AVAILABLE FOR YOUR PERSONAL INSPECTION AT ITS OFFICE. OR A COPY WILL BE MAILED UPON WRITTEN REQUEST.
NO AGENT OR EMPLOYEE OF OUR FIRM HAS ANY REPRESENTATION OR STATEMENT WITH RESPECT TO ANY SECURITY.
If this is a general account and we maintain a special miscellaneous account for you under section 4 (F) (6) of regulation T issued by the board of Governors of the Federal Reserve System, this is a combined statement of your general account and special miscellaneous account. The permanent record of the special miscellaneous account as required by regulation T is available for your inspection at your request.

THE LAST AMOUNT IN THIS COLUMN
IS YOUR BALANCE

IN ACCOUNT WITH

Oppenheimer & Co.
MEMBERS OF THE NEW YORK STOCK EXCHANGE

5 HANOVER SQUARE • NEW YORK 4, N. Y.

MRS DORA SUROWITZ
1299 OCEAN AVE
BROOKLYN N Y

PERIOD ENDING

08/31/62

ACCOUNT NO.

69016

R.R.

109

O21

21

PAGE

1

YOU MAY HAVE RECEIVED CONFIRMATION FOR TRADES WHICH DO NOT APPEAR ON YOUR STATEMENT. HOWEVER, IF THE SETTLEMENT DATE OF TRADE AS SHOWN ON THE CONFIRMATION WAS LATER THAN THE DATE THAT APPEARS AT THE TOP OF YOUR STATEMENT, THE TRADE WILL APPEAR ON YOUR NEXT REGULAR MONTHLY STATEMENT.

PLEASE ADDRESS ALL COMMUNICATIONS TO THE FIRM AND NOT TO INDIVIDUALS AND KINDLY MENTION YOUR ACCOUNT NUMBER.

DATE MO. DAY	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED	BALANCE (DEBIT UNLESS MARKED CR)	CR	ACCT. TYPE-C
0809	100		BRIT AMER CONST LTD	REC	149500				2-3
0809	100		HILTON HOTELS CORP	REC					2-3
0809	50		MARTIN MARIETTA CORP	REC					2-3
0809	50		OLIN MATHIESON CHEM	REC					2-3
0809	100		SHELL TRANS TRAD ORD	REC					2-3
0820			INTEREST TO AUG20	INT	228				2-3
			BALANCE ENDING AUG31				149728		2-3
	100		BRIT AMER CONST LTD	POS					2-3
	100		HILTON HOTELS CORP	POS					2-3
	50		MARTIN MARIETTA CORP	POS					2-3
	50		OLIN MATHIESON CHEM	POS					2-3
	100		SHELL TRAN&TR N Y SH	POS					2-3
END OF STATEMENT									
EXHIBIT G									

PLEASE PRESERVE THIS STATEMENT FOR YOUR INCOME TAX RECORD.

E. & O.E. WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS OR OMISSIONS.

IN ACCOUNT WITH

Oppenheimer & Co.
MEMBERS OF THE NEW YORK STOCK EXCHANGE

5 HANOVER SQUARE • NEW YORK 4, N. Y.

PERIOD ENDING

ACCOUNT NO.

R.R. 021

PAGE

DEC 31 62

0069016

109

1

MRS DORA SURCHWITZ
1299 OCEAN AVE
BROOKLYN N Y

YOU MAY HAVE RECEIVED CONFIRMATION FOR TRADES WHICH DO NOT APPEAR ON YOUR STATEMENT. HOWEVER, IF THE SETTLEMENT DATE OF TRADE AS SHOWN ON THE CONFIRMATION WAS LATER THAN THE DATE THAT APPEARS AT THE TOP OF YOUR STATEMENT, THE TRADE WILL APPEAR ON YOUR NEXT REGULAR MONTHLY STATEMENT.

PLEASE ADDRESS ALL COMMUNICATIONS TO THE FIRM AND NOT TO INDIVIDUALS AND KINDLY MENTION YOUR ACCOUNT NUMBER.

DATE MO. DAY	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED	BALANCE (DEBIT UNLESS MARKED CR)	CR	ACCT. TYPE-C
			MARGIN ACCOUNT						
1204			BALANCE FORWARD NOV 30				151599		2-3
			100 BR AM CONST LTD	DIV		1026			2-3
1204			2.12 L 15% NRT						
1207			100 HIL HOT 2.37 1/2	DIV		3750			2-3
			50 C PATHIESON CHEM	DIV		1250			2-3
			.25						
1211			CHECK PAID	CHK	1250				2-3
			2.50						
1211			CHECK PAID	CHK	4770				2-3
			2.50						
1219			100 SHEL TR & TR NY	DIV		3270			2-3
			2.326997						
1227			50 MARTIN MARIETTA	DIV		1250			2-3
			.25						
1227			CHECK PAID	CHK	3270				2-3
			.25						
1231			CHECK PAID	CHK	1250				2-3
			2.17 1/2						
1231			INTEREST TO DATE AT 5 %	INT	643				2-3
			CLOSING BALANCE DEC 31 62				152242		
	100		BRITISH AMER CONST LTD	POS					2-3
	100		HILTON HOTELS CORP	POS					2-3
	50		MARTIN MARIETTA CORP	POS					2-3
	50		OLIN PATHIESON CHEM	POS					2-3

EXHIBIT H

PLEASE PRESERVE THIS STATEMENT FOR YOUR INCOME TAX RECORD.

E. & O. E. WE MUST BE IMMEDIATELY OF ANY ERRORS OR OMISSIONS.

IN ACCOUNT WITH **Oppenheimer & Co.** 5 HANOVER SQUARE • NEW YORK 4, N. Y.
MEMBERS OF THE NEW YORK STOCK EXCHANGE

100 NO. 1
08-09-4071

MRS DORA SURCHITZ
1299 OCEAN AVE
BROOKLYN N Y

PERIOD ENDING
OCT 25 63

ACCOUNT NO.
0069016

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YOU MAY HAVE RECEIVED CONFIRMATION FOR TRADES WHICH DO NOT APPEAR ON YOUR STATEMENT. HOWEVER, IF THE SETTLEMENT DATE OF TRADE AS SHOWN ON THE CONFIRMATION WAS LATER THAN THE DATE THAT APPEARS AT THE TOP OF YOUR STATEMENT THE TRADE WILL APPEAR ON YOUR NEXT REGULAR MONTHLY STATEMENT.

PLEASE ADDRESS ALL COMMUNICATIONS TO THE FIRM AND NOT TO INDIVIDUALS AND KINDLY MENTION YOUR ACCOUNT NUMBER.

DATE DAY MO	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED	ACCT. TYPE-C
			MARGIN ACCOUNT				
00263			BALANCE FORWARD SEP 29		327534		2-3
			AMERICAN SUGAR COMPANY	DIV		2250	2-3
			100 SHS @00.2250				
00763			DIV	CHK	2250		2-3
01063	100		AMERICAN SUGAR COMPANY	DEL		329000	2-3
01063	50		MARTIN MARIETTA CORP	DEL			2-3
01063	50		GLIN PATHIESON CHEN	DEL			2-3
01063	100		SHELL TRANSIT N Y SH	DEL			2-3
01563	100		HILTON HOTELS CORP	DEL			2-3
02563			INTEREST TO DATE AT 5 %	INT	499		2-3
			CLOSING BALANCE OCT 25 63			967	
			E-N-D O-F S-T-A-T-E-M-E-N-T				
			EXHIBIT I				

210

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—63-C-2248) • •

AFFIDAVIT.

WALTER J. ROCKLER, being first duly sworn on oath, deposes and says the following:

1. He is an attorney at law admitted to practice in the States of Illinois and New York and the District of Columbia, the United States District Court for the Northern District of Illinois, the Court of Appeals for the Seventh Circuit, and the United States Supreme Court. He is one of counsel for the plaintiff in the above-entitled case.

2. As counsel for the plaintiff, affiant and his colleagues made an extensive and systematic investigation of the facts and law set forth in the Complaint in this action; the character, scope and circumstances of that investigation are more fully described below. In the period from December 1962 to the date of filing the Complaint, affiant and his colleagues spent in excess of 150 hours on this matter. Moreover, their efforts were substantially supplemented by the researches and investigations of Mr. Irving Brilliant, as more fully described below.

3. Affiant has known Mr. Irving Brilliant for approximately sixteen years. This acquaintance began when Mr. Brilliant and he were members of the legal staff of the Office of Chief Counsel for War Crimes, Nurnberg, Germany, engaged in the prosecution of the Nurnberg War Crimes Trials during 1947-1949. Thereafter he maintained friendly relations with Mr. Brilliant; from time to time, he has been Mr. Brilliant's house guest in New York City and Mr. Brilliant has been his house guest in Chicago and Winnetka, Illinois.

4. At the end of December 1962 or the beginning of

January 1963, when Mr. Brilliant was visiting in Chicago, Mr. Brilliant consulted affiant in the latter's professional capacity concerning Hilton Hotels Corporation.

5. Mr. Brilliant explained that he had for some time been acting as advisor and representative in investment matters for several members of his and his wife's families. The family members whom he represented, including himself as trustee for certain family members, owned well in excess of 2,000 shares of Hilton Hotels Corporation.

212 6. In the latter part of December 1962, Mr. Brilliant and other stockholders of Hilton Hotels Corporation whom he represented had received certain documents (Exhibits A and B of the Complaint in this action) from the corporation setting forth an offer to purchase shares of common stock of the corporation upon tender by shareholders. Mr. Brilliant believed that the terms of the offer stated in these documents were very unusual and that the representations made therein were dubious. Upon reviewing and discussing the documents, affiant was also of the tentative opinion that the proposed transaction was legally questionable and should be protested.

7. Shortly thereafter, when Mr. Brilliant had returned to New York City, there was a correspondence between affiant and Mr. Brilliant and telephone calls were exchanged between them. Affiant examined the amendment (Exhibits C and D to the Complaint in this action) made on January 7, 1963 to the original offer by Hilton Hotels Corporation, and other materials and information which he was able to obtain.

8. Mr. Brilliant transmitted information concerning a proposed offer by Hilton Hotels Corporation to purchase, on tender by shareholders, the common stock of a related corporation, Hilton Credit Corporation. Mr. Brilliant requested that affiant state his views also as to the legal propriety of this proposed transaction. After examining

the documents and other information, affiant reached
213 the conclusion that the proposed tender offer with respect to Hilton Credit Corporation stock was probably wrongful from a legal standpoint.

9. Later in January, 1963, stating that he was acting on behalf of his mother-in-law (Mrs. Dora Surowitz), Mr. Brilliant by telephone asked affiant to draft an appropriate letter of protest on the proposed transactions which Mrs. Surowitz might sign and transmit to the corporation. Affiant prepared such a draft letter.

10. Affiant was subsequently informed that Mrs. Surowitz had sent a letter of protest to the corporation. He was also furnished by Mr. Brilliant with a copy of the reply of the corporation prepared by its counsel, Mr. William J. Friedman, on January 25, 1963.

11. In the months following the consummation of the tender transactions by Hilton Hotels Corporation, Mr. Brilliant requested that affiant continue to investigate these matters and any other transactions involving Hilton Hotels Corporation and Hilton Credit Corporation which might come to his attention. In particular, he wished to ascertain who had tendered stock, at what times, at what prices, and under what circumstances.

12. During the same period, at the request of affiant Mr. Brilliant furnished information obtained from the records of the New York Stock Exchange, from the reports and releases of Hilton Hotels Corporation to stockholders
214 of that corporation, from the New York bank representing the corporation, from financial journals, and from Securities and Exchange Commission releases. Mr. Brilliant also prepared for affiant's use tables and charts concerning transactions of Hilton Hotels Corporation officers, directors and insiders during periods surrounding the tender offer, as well as studies of transactions in its own stock conducted by that corporation for several years prior

to the tender transactions, and volume and price studies of trading generally in the stock of Hilton Hotels Corporation.

13. During this period, affiant and other attorneys associated with him investigated not only the tender transactions of these corporations but also other financial transactions and affairs occurring in recent periods. For example, he secured information with respect to another lawsuit pending against Hilton Hotels Corporation in California and obtained copies of the court records in that matter. He examined other major tender transactions with which he was acquainted or of which he became aware, with a view to the kind of materials and information furnished stockholders authorized to participate in such actions. He reviewed the movement of prices of the stock of Hilton Hotels Corporation and Hilton Credit Corporation. He sought out information on the corporations appearing in financial journals and manuals.

14. During April 1963, at the request of Mr. Brilliant, affiant arranged for the attendance of a colleague at the 215 annual meeting in Chicago of stockholders of Hilton Hotels Corporation. The principal item for consideration before that stockholders' meeting was an amendment to the certificate of incorporation of Hilton Hotels Corporation which would authorize interested directors to vote on self-dealing transactions. When Mr. Brilliant's representative, holding a proxy of I. G. Brilliant, Trustee, sought to vote in opposition to the management proposal in favor of permitting interested persons so to act, the presiding corporate officials refused to honor the proxy.

15. In September 1963, while in Washington D. C. on other business, affiant spent considerable time at the offices of the Securities and Exchange Commission reviewing the public files with respect to Hilton Hotels Corporation and Hilton Credit Corporation. At that time he reviewed all of

the available Form 4 (Ownership Report) files with respect to officers, directors and insiders of Hilton Hotels Corporation. He also secured copies of several Form 4 Reports. He examined the so-called "10-K" (Annual Report) files for Hilton Hotels Corporation and Hilton Credit Corporation. He also examined the "8-K" reports of each corporation and reviewed the registration statements filed by Hilton Hotels Corporation during the three preceding years. He further examined the prospectuses issued by Hilton Hotels Corporation in 1959 and 1961.

16. He discovered that the SEC files reflected several instances of inaccuracies in reporting, inadequacy of 216 disclosure, and omissions and late filings with respect to data and information required by Federal securities laws and regulations. For example, Mr. Conrad Hilton's Form 4 Reports for the latter part of 1962 and January 1963 had to be amended at least twice. Also by way of example, in an "8-K" report filed by Hilton Hotels Corporation in October 1962 for September 1962, it was noted that the corporation had failed in its previous reporting for the year 1961 to disclose a major transaction involving a complicated exchange of land for preferred stock or bonds, or both, of a stated value of approximately \$5,000,000. Furthermore, in the course of his examination and review of the documents filed by Hilton Hotels Corporation and Hilton Credit Corporation, affiant found that transactions involving officers, directors and insiders were frequently reported in an obscure manner, so that the parties and the elements of the transactions were not readily identifiable.

17. During the months following January 1963, affiant personally and with the assistance of other attorneys at his offices also investigated questions of law suggested by the facts and information gained concerning transactions of Hilton Hotels Corporation and Hilton Credit Corpora-

tion. An examination of the Federal securities laws and regulations was undertaken, as well as an examination of statutes and cases relating to directors' and officers' duties to corporations and stockholders in self-dealing transactions and situations.

18. During the period from January 1963 through 217 September 1963 a periodic interchange of information occurred between Mr. Brilliant and affiant by way of letters and telephone calls. Affiant communicated a growing belief and conviction that officers and directors of Hilton Hotels Corporation had engaged in wrongful transactions in connection with the tender offers.

19. In August 1963, Hilton Hotels Corporation announced that it would not pay its usual dividend, declaring that adverse business conditions had made this necessary. During 1963 the market value of the stock of the corporation declined steadily. Mr. Brilliant repeatedly stated to affiant the view that stockholders whom he represented were dissatisfied with the state of Hilton Hotels Corporation affairs. In particular, he had discussed the matter with his mother-in-law, Mrs. Surowitz, and had communicated generally to her the conclusions which he and affiant had reached with respect to the tender transactions. He advised affiant that she wished to bring an action against the corporation and any persons whose transactions involving the corporation were legally improper. Affiant stated that, based upon his research into the facts and law, it appeared that Mr. Conrad Hilton was in violation of Section 16(b) of the Securities Exchange Act of 1934 and that several of the officers and directors of the corporation had violated numerous provisions of the Federal Securities Acts of 1933 and 1934. Mr. Brilliant directed affiant to prepare a complaint or complaints on behalf of Mrs. Surowitz 218 against these entities and any persons whose acts appeared to be wrongful.

20. Accordingly, with the assistance of other members of his firm, affiant prepared a complaint on behalf of Mrs. Surowitz against Hilton Hotels Corporation and Mr. Conrad N. Hilton individually, charging violation of Section 16(b) of the 1934 Securities Act. After this complaint had been transmitted to and read and reviewed by Mr. Brilliant and Mrs. Surowitz, affiant filed the complaint in the United States District Court for the Northern District of Illinois, Eastern Division, on or about September 23, 1963. This action bears case number 63 C 1783, and is pending before Judge Austin.

21. Thereafter, at the end of October, 1963, affiant and Mr. Richard Watt were invited to discuss the aforementioned suit, 63 C 1783, with Mr. Stanley Zax, counsel for the defendants therein. Mr. Zax informed affiant and Mr. Watt that Mr. Conrad N. Hilton had purchased 101,500 shares of common stock of Hilton Hotels Corporation for an aggregate price in excess of \$3,250,000.00 from several trusts established for the benefit of members of the family of Mr. Henry Crown. For example, a substantial number of shares were purchased from Mr. Harry Wyatt, acting as a trustee, and a substantial number of shares were purchased from Mr. Lester Crown, acting as a trustee. These purchases, made at or about the time that Mr. Hilton tendered 85,000 shares of stock to the Hilton Hotels Corporation at \$28 $\frac{1}{2}$ per share, were made at various prices 219 ranging from \$30 to \$35 per share from trustees and others. When affiant and Mr. Watt inquired why Mr. Conrad Hilton would pay to these Crown interests an average of about \$4 per share above both the alleged market price and his own tender price, they were informed that Mr. Hilton wanted the tender offer to be a success and that the discrepancy in prices reflected Mr. Hilton's philanthropic nature. Mr. Zax further indicated that during the period of the tender offer the officers and directors of Hil-

ton Hotels Corporation were kept informed from time to time as to the amount of stock being offered and the prices at which the stock was being offered.

22. Mr. Zax' communications were consistent with and reinforced conclusions reached from the investigations and researches of affiant and his colleagues and Mr. Brilliant. At the same time, they furnished factual information and details not available in the files of the Securities and Exchange Commission or from other sources.

23. Prior to the conversation with Mr. Zax and at the time that the complaint with respect to Section 16(b) was being prepared, a draft complaint charging multiple violations of the Federal Securities Acts and Regulations and corporate and common law was also being prepared by affiant's colleagues. After the conference with Mr. Zax, this draft complaint was carefully reviewed and prepared in final form, adding thereto the information gained from this and other sources. A verification was prepared in connection with this complaint which set forth that certain allegations were true and correct. Affiant then called Mr. Brilliant to state that he was mailing the complaint and that he wanted the complaint and verification reviewed carefully with Mrs. Surowitz. To the knowledge of affiant, the allegations specified in the verification to be true and correct were and are true and correct.

24. Within a few days after the complaint had been mailed to Mr. Brilliant and Mrs. Surowitz, it was returned to affiant, with verification executed. Counsel for the plaintiff signed the complaint and filed it with the United States District Court for the Northern District of Illinois, Eastern Division, on December 13, 1963.

25. Affiant states that as a result of his investigations he believes the complaint in this action to be firmly grounded in fact and law. He fully expects that a trial of this matter

will establish the merits of the plaintiff's position on behalf of herself and all other stockholders and the substantial truth and soundness of the allegations of fact set forth in the complaint.

26. This affidavit is made necessary by defendants' motion of February 26, 1964 and the proceedings in Court on that date; it is filed solely for the purpose of refuting incorrect and misleading implications therein. Counsel 221 and the plaintiff do not in any respect agree to waive, and expressly reserve, the attorney-client privilege and the confidential and privileged character of counsel's work products.

/s/ Walter J. Rockler.

Subscribed and Sworn to before me this 12 day of March, 1964.

/s/ Helen Hart Jones,
Notary Public.

(Seal)

MOTION TO STRIKE.

Now come the individual defendants in the above entitled action, through their respective attorneys, and move this Court for the entry of an order striking the affidavits of Walter J. Roekler and Irving G. Brilliant, filed March 12, 1964, on the ground that said affidavits fail to state any legally sufficient defense or answer to defendants' motion to strike the complaint, and on the further ground that said affidavits are in direct conflict with the sworn testimony of plaintiff, Mrs. Dora Surowitz.

/s/ Keith F. Bode,

Samuel W. Block,

Keith F. Bode,

Attorneys for Henry Crown,

William J. Friedman,

Stanley R. Zax,

*Attorneys for all individual
Defendants except Henry
Crown.*

135 So. LaSalle St.,
Chicago 3, Illinois,
RAndolph 6-0220.

234

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—63-C-2248) • •

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER OF DISMISSAL.**

This case coming on to be heard on the motion of defendants to dismiss the complaint on the ground that it is a sham and frivolous pleading and on the ground that it contains a false verification, the defendants having filed and submitted in support of said motion the transcript of the deposition of the plaintiff, Mrs. Dora Surowitz, taken on February 25, 1964, plaintiff having submitted in opposition to said motion the affidavits of Walter J. Rockler and Irving G. Brilliant, and the Court having heard the arguments of counsel on said motion on February 26, 1964 and March 23, 1964, and being fully advised in the premises, hereby makes the following:

Findings of Fact.

1. This is a shareholders' derivative action in which the jurisdiction of the Court is invoked on the grounds of diversity of citizenship and of alleged violations of the Securities Act of 1933 and of the Securities Exchange Act of 1934 in connection with the purchase by Hilton Hotels Corporation of certain of its shares of common stock in January, 1963, and the purchase by Hilton Hotels Corporation of certain shares of common stock of Hilton Credit Corporation in February, 1963.
2. The complaint consists of 11 separate counts. It is 92 pages in length and contains an additional 13 pages of exhibits.
3. The complaint makes a number of extremely serious charges against all the directors and certain officers of

Hilton Hotels Corporation. The complaint charges that these men used their corporate positions to make personal profits at the expense of the corporation and other shareholders and that they breached their fiduciary obligations and engaged in schemes and deceptive devices, including the mailing of false and misleading information to shareholders of the corporation. Specifically, the complaint charges that these individual defendants caused Hilton Hotels Corporation to purchase shares of stock of that corporation and of Hilton Credit Corporation, owned by some of the individual defendants, at prices above the fair market prices for such stock. With respect to the purchase of Hilton Hotels Corporation common stock, the complaint further charges that the individual defendants knew that the market price of Hilton Hotels Corporation stock would decline in the near future.

4. Purportedly pursuant to the requirements of Rule 23(b) of the Federal Rules of Civil Procedure, the complaint was verified by the plaintiff, Mrs. Dora Surowitz. The jurat sworn to by Mrs. Surowitz stated, inter alia, that she was familiar with the matters alleged in the complaint; that she knew that the matters alleged in paragraph 1 of each count, paragraphs 6 and 7 of Counts I, II, III, IV and V, the last sentence of paragraph 13 of Counts I, II and VI, the last sentence of paragraph 10 of Counts III and IV, paragraph 5 of Count VI, the last sentence of paragraph 14 of Counts VII, VIII and XI, and the last sentence of paragraph 12 of Counts IX and X were all true and correct; and that she made all of the other allegations of the complaint on information and belief and believed them to be true. Mrs. Surowitz executed this jurat under oath on December 12, 1963.

5. On January 6, 1964, defendants served upon plaintiff's counsel a notice of the taking of the deposition of the plaintiff on February 25, 1964. Plaintiff's counsel

sought to postpone the taking of this deposition until such time as defendants had filed a responsive pleading. This Court denied plaintiff's motion and the deposition of Mrs. Surowitz was taken on the date stated in the notice.

6. The transcript of the deposition of Mrs. Surowitz, which plaintiff's counsel concede is true and correct, has been received in evidence, as Defendant's Exhibit 1, without objection. It reveals that Mrs. Surowitz is an immigrant of limited education who works as a seamstress and that she verified the complaint at the request of her son-in-law of nine years, Irving Brilliant, who brought the document to her in completed form. This was the only occasion on which she discussed the complaint with Mr. Brilliant or with anyone else prior to the time that it was filed.

7. Mr. Brilliant's affidavit describes him as a graduate of the Harvard Law School, whose family owned more than 2,350 shares of Hilton Hotels Corporation stock, now employed as an investment adviser.

8. During the deposition Mrs. Surowitz was asked to state the facts upon which she based the allegations which she had sworn were, to her own knowledge, true and correct. In every material instance Mrs. Surowitz replied that she knew nothing about it and did not understand it.

9. Specifically, Mrs. Surowitz was asked to state the basis upon which she swore that the allegations of paragraph 6 of Counts I, II, III, IV and V that the individual defendants had control over the affairs of Hilton Hotels Corporation were true and correct. She answered, "I don't understand it and I don't know nothing about it."
(Surowitz Dep. p. 15.)

238 10. Mrs. Surowitz was asked to describe the basis upon which she swore that the allegations in paragraph 7 of Counts I, II, III, IV and V, were true and correct. She responded "I don't know nothing. I don't

understand this and I don't know. I can't answer you on that, I don't know." (Surowitz Dep. p. 17.)

11. Mrs. Surowitz was asked to state the facts upon which she swore under oath that the allegations of the last sentence of paragraph 13, in Counts I, II, V and VI, of the last sentence of paragraph 10 of Counts III and IV, of the last sentence of paragraph 14 of Counts VII, VIII and XI, and the last sentence of paragraph 12 of Counts IX and X, that she had protested to the defendant corporation against the gross impropriety of the acts set forth in the complaint, were true and correct. She replied "I don't know nothing about it." (Surowitz Dep. p. 18.) "I don't know, I can't answer you on that neither, because I don't know." (Surowitz Dep. p. 18.) "I can't, I don't know." (Surowitz Dep. p. 19.) "No, I don't understand it." (Surowitz Dep. p. 20.)

12. Mrs. Surowitz was asked to state the basis upon which she stated under oath that the allegations of paragraph 5 of Count VI that the action is not a collusive one instituted for the purpose of conferring jurisdiction upon a court of the United States of a cause of action over which it would not otherwise have jurisdiction, were true and correct. She replied, "I don't know. I can't tell." (Surowitz Dep. p. 19.)

13. Mrs. Surowitz stated in her verification that she made all the other allegations in the complaint upon information and belief and that she believed them to be true.

14. Mrs. Surowitz was then asked to state the facts and information upon which she based her belief as to the correctness of specific allegations she had made on information and belief. In each instance in which Mrs. Surowitz was asked concerning a particular allegation, she replied that she knew nothing about it and did not understand it. She sometimes added that she had left it all to her son-in-law, Irving Brilliant.

15. Specifically, Mrs. Surowitz was asked to state the information she had with respect to the allegation of paragraph 8 of Count I that the explanation set forth in certain documents sent to the stockholders of Hilton Hotels Corporation was false and misleading and was known by the individual defendants to be false and misleading. Mrs. Surowitz replied, "I can't give it to you because I can't explain it to you and I don't know." (Surowitz Dep. p. 21.)

16. Mrs. Surowitz was asked to state the information upon which she formed the belief that defendants carried out a manipulative or deceptive device or contrivance as alleged in paragraph 8 of Count I. She replied, "I can't explain it to you in my words. I don't know." (Surowitz Dep. p. 22.)

240 17. Mrs. Surowitz was asked to state the information upon which she formed a belief as to the truth of the allegation in paragraph 8(a) of Count I that the individual defendants were engaged in a plan and scheme to make it possible for them to dispose of shares in Hilton Hotels Corporation at prices more favorable than they could obtain on the market at a time when they knew or should have known that the business affairs of the corporation would shortly lead to a substantial drop in the value of the shares. She replied "I don't know. I can't explain it." (Surowitz Dep. p. 22.)

18. Mrs. Surowitz was asked to state the facts upon which she based her belief of the truth of the charge in paragraph 8(a) of Count I that the individual defendants were engaged in a plan and scheme to make it possible for defendant Henry Crown to dispose of large holdings in the common stock of Hilton Hotels Corporation at prices above the market price for such stock and under circumstances where the disposal of the stock would not become publicly known. She replied, "I don't know." (Surowitz Dep. p. 23.)

19. Mrs. Surowitz was asked to state the facts upon which she based her belief of the truth of the allegations of paragraph 8(b) of Count I that the individual defendants took the action previously described in such a way as to conceal from the corporation and the stockholders the true purpose of the offer to purchase stock, and in such a way as to make it appear that it was to the corporation's advantage to effect such a purchase of approximately 10 per cent of its outstanding shares. She replied "No, I don't know. I don't know." (Surowitz Dep. p. 24.)

20. Mrs. Surowitz was then asked the following general question and made the following answer:

"Q. Do you know any facts, Mrs. Surowitz, at all, upon which you based these allegations?

"A. I don't know. I can't give you no facts because I don't understand it." (Surowitz Dep. p. 24.)

21. The transcript discloses that there was then a short recess and thereafter the following took place:

"Mr. Block: Let the record show that Mr. Watt and Mr. Block have now discussed the further questioning with respect to the information upon which the witness had formed the belief to which she swore and it is agreeable that I ask the following question:

"By Mr. Block:

"Q. Mrs. Surowitz, if I ask you about each of the other allegations of the complaint to which you have sworn on information and belief as being true and correct and that you believe them to be true and correct, your answer would be the same, would it not, that you have no information as to those?

"A. I have no information because my son-in-law, I left it to him, and he was the one that knew all about it." (Surowitz Dep. pp. 24-25.)

242 22. Mrs. Surowitz stated that she did not know any of the individual defendants personally and, in response to a question concerning whether she knew anything which would indicate that they were not men of honesty and integrity, stated that she knew nothing about them. (Surowitz Dep. p. 14.)

23. Finally, Mrs. Surowitz was asked if she knew of any action wrongful or improper done by any officers or directors of Hilton Hotels Corporation. Her reply was "I couldn't—all I know was that my stock wasn't right and that's all." (Surowitz Dep. p. 21.)

24. Mrs. Surowitz stated that she had not met Mr. Richard Watt, chief counsel for the plaintiff in this action, until the day before the deposition. She stated that she had met Mr. Walter J. Rockler, Mr. Watt's partner, on one prior occasion but could not recall whether this was before or after the filing of the complaint. Mrs. Surowitz stated that the expenses of her trip to Chicago for the deposition were paid by her son-in-law, Mr. Brilliant, and that she was staying at the home of her counsel, Mr. Rockler. On advice of counsel she refused to answer any further questions concerning the existence or nature of any arrangements for the payment of legal fees or disbursements in the litigation. (Surowitz Dep. pp. 10-11, 25-26.)

25. After Mrs. Surowitz had been examined by defendant's counsel, she had a conference with her attorneys in another room. Her counsel then undertook to examine her further. During this examination by her own counsel, Mrs. Surowitz merely stated that she remembered that the dividend of Hilton Hotels Corporation was passed sometime in 1963 and that she so informed Mr. Brilliant, who stated that he would try to see what was wrong that she didn't get any dividends. She also testified that in December, 1962, she received an offer by Hilton Hotels Corporation to purchase her stock,

a copy of which offer was attached to the complaint. She gave this document to Mr. Brilliant. She testified that Mr. Brilliant was her financial adviser and that she relied upon him. (Surowitz Dep. pp. 28-34.)

26. Under examination by her own counsel, the only testimony which Mrs. Surowitz gave concerning her verification of the complaint was in response to the following series of leading questions:

“By Mr. Watt:

“Q. Now at the time, Mrs. Surowitz, that you signed the complaint which Mr. Block has asked you about, did you discuss Hilton Hotels Corporation with your son-in-law?

“A. Yes.

“Q. Did he explain to you what he thought was wrong with the handling of certain transactions by the corporation?

“A. Yes, he explained it to me.

“Q. After that explanation to you, did you sign the complaint?

“A. Yes.” (Surowitz Dep. pp. 33-34.)

27. Thereafter, upon examination by defendants' 244 counsel, Mrs. Surowitz was asked the following questions about the three leading questions quoted in the preceding paragraph:

“By Mr. Block:

“Q. Mrs. Surowitz, when we adjourned this deposition, you went into a room with your counsel, did you not? Just a few minutes ago?

“A. Well, we went into the room.

“Q. And at that time isn't it correct that either Mr. Rockler or Mr. Watt told you that they would ask you the last three questions that were asked you and told you what to answer?

"A. I don't know what I—we didn't say anything.

"Q. Pardon me?

"A. We didn't say nothing about it.

"Q. You didn't say anything? How long were you in the room?

"A. I didn't time myself.

"Q. If I told you you were in the room about 15 minutes, would your answers still be that you didn't say anything while you were in there?

"A. No.

"Q. At that time isn't it correct that they told you that they would ask you these questions about your discussions with Mr. Brilliant?

"A. I refuse to answer that." (Surowitz Dep. pp. 34-35.)

245 28. She gave no testimony under examination by either her own counsel or counsel for the defendants, concerning the nature of her charges against the directors of Hilton Hotels Corporation or the basis for the allegations to which she had sworn under oath. At no time did she attempt to state in even the most simple or rudimentary terms the nature of her grievances or of the charges made in the complaint. Mrs. Surowitz at no time stated that any of the allegations of the 92 page complaint were, to her knowledge, true and correct, nor that any of such allegations were believed by her to be true and correct, based upon information and belief.

29. I find that the failure of Mrs. Surowitz on her deposition to supply any information whatever about the nature of the charges in the complaint or about the basis for her sworn statement that these charges were true and correct, or that she believed them to be true and correct, was not caused by the use of technical or legal language in the questions or by her failure to understand what was being asked. Plaintiff's counsel have in effect

conceded the truth of this finding by their acquiescence in the general question and answer by which Mrs. Surowitz stated that she had no information about any of the other allegations concerning which she had not been specifically examined, and by the failure of plaintiff's counsel to obtain from Mrs. Surowitz any information about the nature or basis of the charges in the complaint during their examination of her, despite a private conference before 246 this examination and despite the liberal use of leading questions.

30. At the request of counsel for plaintiff on February 26, 1964, the Court granted 15 days to file appropriate documents opposing defendants' motion to dismiss. On March 12, 1964, plaintiff filed, in opposition to the motion to dismiss, the affidavits of Irving G. Brilliant and Walter J. Rockler.

31. These affidavits contain much detail concerning purported investigations made by Messrs. Brilliant and Rockler of the affairs of Hilton Hotels Corporation. The affidavit of Mr. Brilliant states that he or members of his family in December, 1962, owned in excess of 2,350 shares of the common stock of Hilton Hotels Corporation, as well as \$10,000 of the 6% debentures due in 1984, and 110 stock purchase warrants of the corporation. The affidavit states that Mr. Brilliant believes that there are reasonable grounds for the maintenance of this derivative action. However, the affidavit goes on to state that Mr. Brilliant decided that his wife should not be a party plaintiff because of her health, and that he should not be a party plaintiff in a fiduciary capacity "because of possible legal complications that might be entailed." Instead, he asked his mother-in-law, Mrs. Surowitz, whom he describes 247 as a "hard working woman of limited education who reads very little English and has some difficulty in understanding English," if she would act as plaintiff in

this action. The affidavit states that Mr. Brilliant told Mrs. Surowitz that it was reasonable to assume that "members of the family" would be willing to pay "a major portion of the expenses of the litigation." Mrs. Surowitz agreed to act as plaintiff and executed the verification. Mr. Brilliant states in a conclusory fashion that he "read and explained" the complaint to Mrs. Surowitz before she verified it. Mr. Rockler's affidavit indicates that he dealt only with Mr. Brilliant and that he forwarded the complaint to Mr. Brilliant for verification, received back the executed document, and filed it with this court. The affidavit contained no other statements concerning the knowledge on which Mrs. Surowitz based her verification or the arrangements concerning the contemplated payment of legal fees and disbursements in connection with this litigation.

32. Plaintiff's counsel argued that such affidavits furnished the basis for a finding that there was compliance with the requirements of Rule 11 of the Federal Rules of Civil Procedure in that such counsel has reasonable grounds for filing the complaint.

33. The unequivocal evidence of plaintiff's own testimony 248 many demonstrates that at the time she verified the complaint under oath, she was not in fact familiar with any of the allegations of the complaint, did not in fact know any of them to be true and correct, and did not in fact have any belief or any information upon which to base a belief that any of the allegations were true and correct. Insofar as the general language in Mr. Brilliant's affidavit attempts to imply that Mrs. Surowitz understood the allegations of the complaint or the nature of the charges against defendants, any possible implication to this effect is destroyed by the conclusory nature of Mr. Brilliant's statements, and by the testimony of plaintiff herself which shows a complete lack of knowledge concerning the complaint or charges made in the complaint.

34. Plaintiff's counsel have not asked for leave to file a substitute verification or an amended complaint.

35. The affidavit of Mr. Brilliant discloses that the cost of the action is to be shared by others than plaintiff pursuant to a "reasonable" understanding. No disclosure of such understanding appears as an exception to the affidavit filed herein pursuant to the requirements of Rule 39 of the Rules of the United States District Court for the Northern District of Illinois, Eastern Division.

Conclusions Of Law.

On the basis of the foregoing findings of fact, the 249 Court makes the following conclusions of law:

1. This action is a stockholders' derivative action and therefore Rule 23(b) of the Federal Rules of Civil Procedure requires that the complaint be verified under oath. The complaint was filed with an affidavit of the plaintiff attached thereto which purported to be the verification required by Rule 23(b).

2. The verification of Mrs. Surowitz was false for the following, among other, reasons:

(a) it states that she had read the complaint and was familiar with the matters therein alleged, whereas in fact she had no knowledge whatever concerning the allegations of the complaint or even concerning the general nature of the charges made in the complaint;

(b) the verification states that certain allegations of the complaint were, to her knowledge, true and correct, whereas in fact she admitted that she has no knowledge whatever concerning these allegations; and

(c) the verification states that she made all of the other allegations in the complaint on information and belief and believed them to be true, whereas in fact she has no information or belief or knowledge concerning

any of the allegations of the complaint or even concerning the general nature of the charges made in the complaint.

250 Accordingly, the verification was a nullity and did not constitute the verification required by Rule 23(b).

3. The requirements of Rule 23(b) are in addition to those of Rule 11. The latter Rule applies to all actions filed in the Federal Courts. Rule 23(b), however, provides additional protection against the filing of sham or frivolous complaints, and against the evil of attorneys or others maintaining shareholders' derivative suits by seeking out and inducing shareholders, without knowledge of alleged wrongdoing, to lend their names as plaintiffs. Accordingly, it is not a sufficient compliance with Rule 23(b) to attach a false verification or the verification of a person who has now knowledge or understanding concerning even the general nature of the charges made in the complaint and who executes the verification in blind trust and faith on the general assurance of some other person that he thinks there is sufficient basis for the allegations.

4. The purpose of the verification required under Rule 23(b) is to permit defendants to examine plaintiff concerning the factual basis upon which the allegations of a complaint are made before defendants are required to proceed with the extremely costly and burdensome task of discovery to such complex cases. If the purpose of this requirement is to be accomplished, the person verifying the complaint must at least understand the nature of the charges in
251 the complaint and have some knowledge concerning the factual basis for those charges.

5. The verification of this complaint is false and sham and the complaint must be stricken. Since the plaintiff has not sought leave to substitute any other verification or file an amended complaint, the action will be dismissed.

Judgment.

6. The affidavit filed pursuant to Rule 39 of the Rules of this Court is false in that it fails to set forth an understanding as to the sharing of costs and expenses. The filing of a false affidavit is equivalent to the filing of no affidavit at all. Absent such an affidavit, the complaint must be stricken and the cause dismissed.

Wherefore, It Is Ordered that the complaint in the above entitled cause, and the cause be and the same are hereby dismissed with prejudice, with judgment entered against plaintiff and in favor of defendants for costs and expenses.

Enter:

Julius J. Hoffman,
Judge, United States District Court.

Dated: March 30, 1964.

315 IN THE UNITED STATES DISTRICT COURT,
 for the Northern District of Illinois,
 Eastern Division.

Dora Surowitz, individually and on
behalf of all other similarly
situated shareholders of Hilton
Hotels Corporation,

Plaintiff,

vs.

Hilton Hotels Corporation, a cor-
poration, Conrad N. Hilton, Rob-
ert P. Williford, Robert J. Caverly,
Joseph P. Binns, Spearl
Ellison, Henry Crown, Horace C.
Flanigan, Benno M. Bechhold,
Y. Frank Freeman, Willard W.
Keith, Lawrence Stern, Sam D.
Young, Fritz B. Burns, Vernon
Herndon, Herbert C. Blunck,
Charles L. Fletcher, Robert A.
Groves, Joseph A. Harper, Bar-
ron Hilton, and Hilton Credit
Corporation, a corporation,

Defendants.

Civil Action
No. 63-C-2248
Equitable Relief
Requested.

NOTICE OF APPEAL.

Notice is hereby given that Dora Surowitz, Plaintiff herein, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the Judgment Order of the District Court entered herein on March 30, 1964, dismissing the Complaint, said order containing and setting forth the Court's Findings of Fact and Conclusions of Law.

Plaintiff-Appellant prays that said order be reversed and that the cause be remanded to the District Court with directions to vacate its March 30, 1964 Findings of Fact, Conclusions of Law and Order of Dismissal, to reinstate the Complaint, to order the defendants to answer said Complaint within an early date. Plaintiff-Appellant 316 also prays that this Court award her the costs of this appeal.

The defendants are represented by the following attorneys of record, whose addresses are shown:

Hilton Hotels Corporation,
represented by
A. Leslie Hodson
Don H. Reuben
E. W. Johnson
Lawrence Gunnels
2900 Prudential Plaza
130 East Randolph Drive
Chicago, Illinois 60601

Henry Crown,
represented by
Samuel W. Block
Keith F. Bode
Philip W. Tone
John J. Crown
Suite 330
135 South LaSalle Street
Chicago 3, Illinois

All other defendants,
represented by
William J. Friedman
Howard R. Koven
Stanley R. Zax
Suite 1130
208 South La Salle Street
Chicago 4, Illinois

317 Altheimer, Gray, Naiburg,
Strasburger and Lawton
Suite 1825
One North LaSalle Street
Chicago 2, Illinois

Alan J. Altheimer,
Lionel G. Gross,
Howard L. Kastel,

Cotton, Watt, Rockler & Jones
Suite 2900
105 West Adams Street
Chicago 3, Illinois

Richard W. Watt,
Walter J. Rockler,
David R. Kentoff,

By Richard F. Watt,
Attorneys for Plaintiff-Appellant.

SUPPLEMENTAL APPENDIX

Page of
Record

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- 1-6* Transcript of hearing on January 6, 1964 regarding motions by some defendants to extend time to answer or otherwise plead to the complaint to March 2, 1964.
- 7-9 Transcript of hearing on January 31, 1964 regarding motions of defendants Stern, Keith and Ellison to extend time to answer or otherwise plead to March 2, 1964.
- 10-20 Transcript of hearing on February 7, 1964 regarding plaintiff's motion to postpone the taking of plaintiff's deposition by defendants. Following is a portion of that proceeding:
- • •
- 13 The Court: Now I will hear you, Mr. Watt.
Mr. Watt: Thank you, your Honor.
This case, your Honor, was filed in December, and it was filed by a New York stockholder, Dora Surowitz, a stockholder in Hilton Hotels Corporation. It is a rather lengthy complaint with a number of exhibits attached, and, in essence, it charges certain improprieties by the officers and directors of the Hilton Hotels.

* Page references in this Supplemental Appendix are to reports of proceedings before the trial court. Page references in appellant's appendix are to the rest of the record.

Transcript of Proceedings

The Court: I had it up here on the bench one day in connection with some other motion, and I weighed it, but I didn't read it.

- Mr. Watt: Essentially it charges failure to disclose and misrepresentations under various sections of the Securities Act of 1933 and the Securities & Exchange
14 Act of 1934 with respect to two transactions; (1) Whereby the Hilton Hotels Corporation purchased from shareholders some 300,000 shares, and it is claimed in the complaint that there was not full disclosure with regard to that, and there were misrepresentations made with regard to that.

Secondly, it has to do with the purchase by the Hilton Hotels Corporation of a large number of shares of Hilton Credit Corporation. It is likewise alleged that with respect to that that there was failure to disclose and misrepresentation and that as a result the shareholders had been damaged by the waste and improper diversion of corporate funds.

- Early in January some of the defendants who had up to that point been served and filed appearances came before your Honor and indicated that inasmuch as all defendants had not been served, and many of the defendants, that is, directors, do not reside in Illinois, and would have to be served where they do reside, that they ask until March 2, in which to plead. Subse-
15 quently an additional group of these directors were served with process, and your Honor entered an order likewise giving to those defendants until March 2 to plead, and, I assume, that those defendants who have thus far have just been served will likewise seek similar extension of time.

Colloquy

At about the same time we were served with notice to take the deposition of the plaintiff, Mrs. Surowitz on the 25th or 26th of this month, which would be about six or seven days prior to the time by reason of the extensions that the defendants have within which to answer or to otherwise plead.

We recognize that under the rules and the decisions that having been served with notice, and it being an out-of-state plaintiff, that it is appropriate for Mrs. Surowitz to appear and give her testimony here which we are prepared to do at a proper time.

16 However, I would suggest this: That in the absence of some showing that there is any need on the part of the defendants to have her testimony before they are in a position to answer a plea would be more expeditious, and, I believe, a more orderly way to proceed, if we had a statement of the defendants' position by their pleadings so that we would know not only what the issues are as pleaded by us in the complaint, but what additional issues or defenses there may be that the defendants wish to assert, because if we have Mrs. Surowitz and bring her here and review the matters with her for purposes of the deposition to be taken before any pleadings are filed on behalf of the defendant, we cannot know—all we can do is conjecture—what additional issues, if any, the defendants may have in mind at which they may wish to put in their pleadings.

I think that we are entitled in order to properly represent her and to review the matters with her which may come up by her deposition to know what the issues are which the defendants are going to assert by their pleading or answer, we, therefore, request

Transcript of Proceedings

that the time for the taking of her deposition be continued to some period roughly ten days or two weeks after they have pleaded. We will at that time produce
17 her here so that they can take her deposition.

The Court: I take it from the fact that all the defense lawyers are standing at attention there that this motion is opposed.

Mr. Block: Your Honor, it is.

Mr. Koven: That is correct, your Honor.

The Court: Before I call on the lawyers for the several defendants to reply, I think Mr. Watt should tell me first something about Dora Surowitz, your client. Where does she live?

Mr. Watt: She lives in New York, your Honor.

The Court: In what capacity is she suing here?

Mr. Watt: She is suing in the capacity of a shareholder of Hilton Hotels Corporation.

The Court: And what is the extent of her holdings?

Mr. Watt: I am not certain of the precise number of shares she holds, your Honor, I couldn't state that to you. It is not a large number of shares.

The Court: Has she signed the complaint herself?

Mr. Watt: She has, yes, sir.

The Court: Under oath?

18 Mr. Watt: It is under oath. I should state with regard to the overwhelming portion of the allegations that are set out in the complaint, it is on the basis of information and belief.

The Court: I would like to give you my feeling about this section of the rules which—rather the rule which permits depositions to be taken after proper notice and before issue joined.

Here is a case which you tell me there are some very serious charges made against men, who not only here,

Colloquy

but throughout the country, that is not to say, that men widely known here throughout the country may not be guilty of the charges set out in the complaint.

But, I believe, this: That when charges like that are made, I think, that the defendants against whom they are made, have the right, if they choose to assert it promptly—postponing the taking of the deposition, that will be quite all right with me—but they should have the right if they choose to assert it, to find out what the plaintiff knows about this case.

- 19 Now I have had these situations in similar cases, and we have not infrequently had these situations in connection with proposed murder cases, and I always allow the taking of depositions under rules like that.

As a matter of fact, if this motion is opposed—unless the lawyers want to say something—

Mr. Block: No, your Honor, I think, your Honor has—

The Court (Continuing): — I will be glad to hear from each and every one of you.

Mr. Koven: No, your Honor has expressed our sentiments.

Mr. Watt: Thank you, your Honor.

Mr. Block: Thank you, your Honor.

The Court: Your motion will be denied.

* * *

- 21-30 Transcript of hearing on February 20, 1964 regarding motion for leave to enter appearance of A. L. Hodson, Don H. Reuben, E. W. Johnson and Lawrence Gunnels as attorneys for the defendant Hilton Hotels Corporation and for an additional sixty days to answer or otherwise plead for that defendant.

Transcript of Proceedings

31-53 Transcript of hearing on February 26, 1964 regarding defendants' motion to dismiss. Following are excerpts from that proceeding:

32 Mr. Block: Good morning, your Honor. The Court may recall that sometime ago we had scheduled the taking of the deposition of Dora Surowitz, the plaintiff, and counsel for Mrs. Surowitz came before the Court and asked that the deposition be postponed until we had answered so that they could determine in what areas our questioning might go. The Court at that time pointed out that these charges contained in the complaint were grave, indeed, made against men of standing in the community, and while that last point did not in any sense guarantee that they were not guilty of the charges, it did entitle them to learn promptly under what circumstances such charges had been made.

We took Mrs. Surowitz' deposition yesterday, your Honor, and now come before this Court in what I think is a rather unusual proceeding to point out immediately the basis for these grave charges. We have indicated in our notice and motion that we rely
33 upon Mrs. Surowitz' deposition which has been written up by Mrs. Brackenbury and I believe is before the Court.

* * *

35 The Court: I interrupt to say I do not have a copy of the complaint here.

Mr. Block: The complaint?

The Court: Is the complaint under oath?

Mr. Block: Yes, your Honor, and we come before your Honor on two of the federal rules, the first being 23.

Colloquy

The Court will recall that the complaint is some 92 pages long with 13—

The Court: I remember seeing it. I had forgotten whether it was under oath or not.

Mr. Block: It is, your Honor, as Rule 23 requires it to be, and if the requirement of Rule 23 is to be anything else than a complete nonentity, a completely pointless thing, then this is the type of complaint which should not be permitted.

* * *

36 Now, your Honor, the defendants in this case are entitled to know upon what this plaintiff claims to base these allegations which she makes on behalf of all of the thousands of shareholders of Hilton Hotels Corporation.

Mr. Watt finally, after a short intermission, agreed that if I asked her the same question as to all of the allegations, her answer would be the same.

* * *

42 The Court: It is extraordinary when one looks at the jurat which one has before him and compares it with the sworn testimony of the witness, and the copy of the transcript I have here has appended to it the affidavit of the reporter who took the testimony.

Mr. Watt: I am not questioning the accuracy of the transcript. I haven't studied it carefully or closely enough to know whether there are any matters that were not accurately transcribed. That is not the point I wish to make.

The Court: I will give you a chance to look at the transcript.

Transcript of Proceedings

Mr. Watt: What I would like to suggest is that they have now filed an affidavit as of this date as to the date on which the stock was placed in her name of record. It is our understanding that it was in street name, in spite of the fact it was hers since 1957. We would like an opportunity to file an answering
43 affidavit and it should be heard under Rule 13(a) as a contested motion. We are certainly prepared to argue it.

The Court: This kind of motion should be heard orally. I don't need any briefs on it. I am not prejudging you, but it is a factual matter. I don't know how you will meet factually the affidavit which is appended to the complaint when compared with the answers of the plaintiff made yesterday.

Mr. Watt: I would simply say as a matter of observation I believe the witness who testified that so far as investment matters were concerned, she relied on her son-in-law.

The Court: Well, I would say that I don't think we need reach the question of stockholdings here. I would consider it also. Here is a person who swears under oath:

"Dora Surowitz, being first duly sworn, on oath deposes and states that she is the plaintiff in the above-entitled cause, that she has read the above and foregoing complaint by her attorney subscribed, and is familiar with the matters therein alleged."

It then goes on to tell about which allegations, the
44 numbers of them, are true and correct, and that as to all other matters alleged in the above and foregoing complaint, she makes said allegations on information and belief and believes them to be true.

Colloquy

Now how would you have me reconcile the allegations in that affidavit with the sworn testimony of the plaintiff as it appears from this transcript?

Mr. Watt: Well, your Honor, I believe it can be reconciled. I believe as a matter of law that the motion is not well founded, but we would like—

The Court: Point it out to me.

Mr. Watt: We would like an opportunity to be heard if we may.

The Court: I give you the opportunity. This is a matter, this kind of a motion, which is something the Court has to look at very seriously.

Mr. Watt: I quite understand, your Honor.

The Court: If the position of the defendants as presented by Mr. Block and supplemented by Mr. Reuben is correct, you agree, do you not, as a member of the Bar of this Court that it is quite serious?

45 Mr. Watt: I agree that the issues—

The Court: Quite apart from the issues in the lawsuit?

Mr. Watt: I agree the issues presented by this to the Court is a serious issue which should be heard and considered at a time when we have prepared ourselves to argue the matter before your Honor. That opportunity we have not had because we were noticed at 3:30 yesterday afternoon.

• • •

46 The Court: Mr. Block, I take it in the interest of making a full record here that is correct in every detail, an opportunity should be given to the plaintiff to file such documents in opposition to your motion

Transcript of Proceedings

47 as are thought to be appropriate. I would say that this deposition has not been filed formally, has it?

Mr. Block: No, your Honor, it has not.

The Court: Whatever action the Court might take here would be based on the sworn testimony and of course the sworn complaint.

How much time do you think you would need?

Mr. Watt: We would like 15 days within which to file opposing affidavits, your Honor, and we will be ready at an appropriate date thereafter to present argument if your Honor wishes it done on the basis of oral argument. We will be prepared.

• • •

49 The Court: The clerk is directed to file the deposition of the plaintiff.

Fifteen days to the plaintiff to file such documents as her counsel might think appropriate in opposition to this motion.

• • •

54-57 Transcript of hearing on March 12, 1964 regarding plaintiff's motion to transfer case to Executive Committee under the related cases rule.

58-132 Transcript of hearing on March 23, 1964 containing the argument on defendants' motion to dismiss action. Following are excerpts from that hearing:

• • •

59 Mr. Block: This action, your Honor, in which this motion is filed, is a secondary action, a derivative
60 action by a shareholder which, pursuant to Rule 23 of the Federal Rules of Civil Procedure, must be verified by the plaintiff.

Colloquy

Now the court at the time we made this motion commented on the nature of the oath which was taken by the plaintiff here and made a part of the complaint. The oath is that the plaintiff read the complaint, that the plaintiff was familiar with the matters alleged, that the same were true and correct except as to those which were alleged upon information and belief, which the plaintiff believed to be true.

Now it is not necessary to belabor the point here that the plaintiff had no knowledge of any kind of this proceeding and no understanding. In fact, the plaintiff didn't even understand the meaning of the word "tender" which was the basis of the action.

* * *

62 Mr. Block: Now, your Honor, this motion is not
made, as certain cases point out, on the basis of an affidavit of the defendants that there is no truth to the allegations of the complaint. This motion is made because the pleading has not been verified as required by Rule 23. It is a sham and it is an imposition on this court.

* * *

63 Mr. Block: Now here is a woman who has brought
64 before this court this action. The affidavit of Mr. Rockler or Mr. Brilliant, I forget which, is that she was a woman of limited education, owned 100 shares of stock. She says she owned 100 shares of stock. One of our affidavits indicates that she didn't transfer them into her own name, if she ever owned them, until 1963. But she has brought before this court as a plaintiff required to swear to an exceedingly grave charge and she is absolutely unable to give the defendants any reason at all for her charges.